APPENDIX

Opinion and Judgment of the Superior Court of New Jersey, Appellate Division (June 28, 1982)

(Filed—June 28, 1982)

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION—A-5084-80T3

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants-Respondents.

Opinion and Judgment of the Superior Court New Jersey, Appellate Division (June 28, 1982)

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION—A-5423-80T3

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff-Respondent,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants-Appellants.

Argued June 14, 1982—Decided June 28, 1982.

Before Judges Milmed, Joelson and Gaulkin.

On appeal from the Superior Court, Chancery Division, Mercer County.

Stanley Weiss argued the cause for plaintiff-appellant and respondent Motor Club of America Insurance Company (Carpenter, Bennett & Morrissey, attorneys; Stephen A. Gilbert, of counsel; Mr. Weiss and Robert E. Turtz, on the brief).

Opinion and Judgment of the Superior Court New Jersey, Appellate Division (June 28, 1982)

John J. Hayden, Deputy Attorney General, argued the cause for defendants-respondents and appellants State of New Jersey, State of New Jersey Department of Insurance and James J. Sheeran, New Jersey Commissioner of Insurance (Irwin I. Kimmelman, Attorney General, attorney; James J. Ciancia, Assistant Attorney General, and Mr. Hayden on the brief).

Per Curiam

We affirm paragraphs 1, 3 and 5 of the order of July 6, 1981 substantially for the reasons expressed by Judge Dreier in his opinion dated June 2, 1981. Our affirmance, however, should not be construed as our endorsement of Judge Dreier's apparent acceptance of plaintiff's contention that "[t]he only way for a domestic carrier to get out from under the burden of the New Jersey regulatory scheme is for the Commissioner to move against the carrier to liquidate it on one of several statutory grounds"; that matter need not be passed upon by us at this time.

Paragraph 2 of the July 6, 1981 order denied defendants' motion "to dismiss Count I of the Complaint so far as said Count I seeks declaratory relief." That denial proceeded from Judge Dreier's determination that plaintiff had sufficiently stated a cause of action that "the regulations as administered thwarted plaintiff's exercise of appellate rights" and that the present litigation "is plaintiff's only means of attack." We find Judge Dreier was mistaken in this regard. The asserted delays in the administrative process or other allegedly improper regulatory practices can only appropriately be presented and considered in the context of a rate

proceeding. *Cf. Switz* v. *Middletown Tp.*, 23 N.J. 580, 587 (1957). To explore the entire history of alleged practices of the State in insurance regulation, as projected by plaintiff in its declaratory judgment claim, would be, in our view, of no utility in determining whether or to what extent plaintiff might presently be entitled to any relief.

We also find paragraph 4 of the July 6, 1981 order to be improvident: at no time prior to institution of this suit did plaintiff seek to cease doing business in New Jersey.

Accordingly, paragraphs 2 and 4 of the July 6, 1981 order are reversed and the remaining provisions of the order are affirmed; the matter is remanded to the Chancery Division to enter an appropriate amended order which dismisses Count I of the Complaint in its entirety and which denies plaintiff leave to amend Counts II and III.

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—MERCER COUNTY
Docket No. C 702-80E
Civil Action

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants.

Stanley Weiss argued the cause for plaintiff
(Carpenter, Bennett and Morrissey, Attorneys)

Mark S. Rattner, Deputy Attorney General argued the cause for defendants
(James R. Zazzali, Attorney General of New Jersey)

Date Decided: June 2, 1981

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

Dreier, J.S.C.

Motor Club of America Insurance Company (hereinafter MCAIC), a New Jersey corporation engaged in the business of writing automobile insurance, complains of the New Jersey regulatory system which governs that business, claiming that it has caused a flourishing, profitable enterprise to decline rapidly to the point where there is now question of its ability to remain solvent.

MCAIC asserts that the regulatory system, evolved by statute and administrative decrees[1] since the mid-1970's has had a general negative effect on the entire automobile insurance business in New Jersey, but has had a devastating effect on MCAIC because of certain peculiarities of MCAIC's position. The first of these is that MCAIC is almost totally invested in writing automobile insurance, and cannot, therefore, survive as other companies allegedly do by making profits in other lines of insurance to offset the losses sustained in automobile insurance. The second peculiarity of MCAIC's position is that it is a domestic carrier. It cannot, therefore, charge higher rates out of New Jersey to balance the loss operation within this state. Also, while foreign corporations may choose to relinquish their New Jersey licenses rather than work under the system as it exists,

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[1] New Jersey controls the nature and substance of the insurance product to be sold (*e.g.* N.J.S.A. 39:6A-4; 39:6A-10), the persons to whom the product must be sold (*e.g.* N.J.S.A. 39:6A-3; 17:29D-1; N.J.A.C. 11:3-1, *et seq.*; N.J.S.A. 17:30B-1, *et seq.*), the price at which the products must be sold (N.J.S.A. 17:29A-7) and whether, when and on what terms the insurer can withdraw from business (N.J.S.A. 17:30C-1 *et seq.*) or dispose of its assets (N.J.S.A. 17:27A-1 *et seq.*; B-1 *et seq.*).

domestic corporations cannot voluntarily abandon New Jersey under N.J.S.A. 17:30C-1 *et seq.* The only way for a domestic carrier to get out from under the burden of the New Jersey regulatory scheme is for the Commissioner to move against the carrier to liquidate it on one of several statutory grounds, including insolvency. N.J.S.A. 17:30C-8[2]. Because it is thus both peculiarly damaged by the regulations at issue and unable to escape them, MCAIC contends the application of the legislative scheme to its business is unconstitutional. MCAIC seeks a declaration to this effect, as well as compensation for the general losses it has suffered over the past eight years, arguing that the regulation has effected an inverse condemnation, and a taking by erosion. Plaintiff alleges this confiscatory effect was accomplished, (1) by the constitutionally inadequate return allowed, (2) by the inadequate statutory provisions for administrative relief from rate making decisions and (3) by the unconstitutional prohibition against voluntary cessation of business.[3]

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[2] The State has argued that voluntary dissolution is possible. The Court, however, agrees with MCAIC that reference in N.J.S.A. 17:30C-8(b) to voluntary dissolution is either an oversight or a reference to any such dissolutions which were pending at the time the law became effective in 1975. To find otherwise would be contrary to the manifest purpose of the new regulations which was to tighten, rather than relax, the Commissioner's control over the industry.

[3] There are four counts to MCAIC's complaint. The first demands compensation for the disastrous fall in MCAIC's sur-

(Footnote continued on following page)

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

The case is before this court today on motion by the Department of Insurance to dismiss for failure to state a cause of action. MCAIC is really engaged, the State argues, in a impermissible collateral attack on a series of rate making decisions, from each of which MCAIC had the right of appeal, which it chose not to exercise. Had MCAIC appealed, the rate might have been adjusted, and the losses of which it complains halted and reversed.

MCAIC counters that its damages were cumulative, and that, since any appeal from a particular decision

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(Footnote continued from preceding page)

plus from $21,026,296. in 1973 to under $3,000,000. (on a statutory basis) at the present time, arising out of excessive regulation amounting to a taking of private property for public use. The second count demands compensation for the same losses on the ground they were sustained while operating under a scheme that would not allow a discontinuance of business. The third count demands compensation on the ground that even before voluntary cessation was totally eliminated it was excessively circumscribed, in effect forcing MCAIC to remain in a losing business. The fourth count demanded an injunction against a delinquency proceeding it was anticipated the Commissioner of Insurance was shortly to begin. This last count has been rendered moot. After the complaint was filed substantial new equity was infused into plaintiff company and the Commissioner agreed not to proceed at this time.

would have looked for prospective relief only[4], appellate relief would have left unaddressed its constitutional claim based on losses caused by past decisions. Plaintiff argues also that the appellate route available is constitutionally inadequate for two reasons. Delays in appellate process are excessive; the statutes provide no time limit within which the Commissioner must make a decision[5], and, in practice it is alleged, the Commissioner has used this factor coercively to discourage appeal. Additionally, there is no statutory provision for an interim filing for a rate adjustment pending appeal.[6] The result is that an appellant would suffer so long under the old rate that by the time any new one is granted it would be necessarily too little and too late, so much so that the company is better off accepting its inadequate increase early, rather than delaying it by prosecution of an appeal. Plaintiff asserts this situation is so coercive that, although ap-

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[4] Both plaintiff and defendant agree any hypothetically adequate rate which might have been granted would have compensated plaintiff only from the date it was granted forward. It is well established that the rate set for a regulated industry cannot be geared to make up for past losses. *In re N.J. Power & Light Co.*, 15 N.J. 82 (1954); *In re Intrastate Industrial Sand Rates*, 66 N.J. 12 (1974); *In re Revision of Rates of Toms River Water Co.*, 82 N.J. 201 (1980).

[5] By contrast see N.J.S.A. 48:2-21(b)(1), declaring that the Board of Public Utility Commissioners must complete and close rate hearings within six (6) months and enter a final order in eight (8).

[6] Such provision is common in rate statutes. See, for example, N.J.S.A. 48:2-21.1.

proximately 125 million dollars has been lost annually in the industry since 1975, there has been *no* appeal in an effort to halt this drain.[7]

Three questions must be answered by this court in deciding the State's motion to dismiss. First, may plaintiff come to this Chancery Court seeking a declaration on any of the bases alleged that the New Jersey regulatory scheme is unconstitutional as applied, or in so doing is it making an impermissible collateral attack on rate making decisions? Second, assuming plaintiff could demonstrate it was not failure of business judgment but the inexorable effect of legislation which dramatically eroded its assets over the last several years, would plaintiff be entitled to compensation from the State? Third, assuming plaintiff could demonstrate it is a losing business which would not have been allowed to cease operations voluntarily, would plaintiff be entitled to compensation from the State where plaintiff had not wanted to cease operations and, in fact, initiated this law suit to enjoin the anticipated commencement of delinquency proceedings. (See footnote 3).

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[7] In accordance with N.J.S.A. 17:29A-3 the insurance industry has applied for rates through an organization called Insurance Services Offices (ISO). MCAIC is a member company. Since 1973, ISO has, on behalf of member companies, requested eleven increases in the permissible rates on private passenger automobile coverage. It has received ten such increases and the last filed is still pending. All ten of the increases granted were less than the amounts sought, but ISO has never appealed, nor has MCAIC as an individual entity.

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

I

Of MCAIC's claims, only that which alleges an inadequate return could have been raised in an appeal from rate making. The attack on the adequacy of the appellate process and the attack on the statutory provisions forbidding voluntary withdrawal clearly would have had no forum there. MCAIC contends that even the gross inadequacy of the rate could not have been raised because it is a claim in inverse condemnation, that is, a remedy by which a property owner obtains compensation for a *de facto* taking of his property by a governmental authority. It was no particular rate which effected the taking, rather it was the cumulative effect of many rate decisions, each of which may have seemed arguably correct as a predictive matter, and thus sustainable as an exercise of defendant's administrative discretion. This is not persuasive. After the rate was set two or three times and losses followed in its wake, it must have been clear that something was wrong with the method of prediction. If MCAIC could not detect the Commissioner was in error, and in effect had no idea how to correct whatever was wrong, MCAIC has nothing to complain of. Its losses can be characterized as a failure of business judgment. If MCAIC did have an idea what was wrong but could not get the Commissioner to correct his method of decision, MCAIC would, under ordinary circumstances, be obliged to appeal. Not having appealed, its accumulated losses would be its own responsibility.

Of course if the regulations as administered thwarted plaintiff's exercise of appellate rights, this court may review plaintiff's claims notwithstanding plaintiff's failure to appeal.

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

Plaintiff's claims do state a cause of action. (a) Regulation may be found to have an unconstitutional effect where the rate allowed does not provide an adequate return to the business. *Smyth* v. *Ames*, 169 U.S. 466, 42 L.Ed. 819 (1898), decree modified 171 U.S. 361, 43 L.Ed. 197 (1898), *Helmsley* v. *Borough of Fort Lee*, 78 N.J. 200 (1978) App. dism. 440 U.S. 978, 60 L.Ed. 2d 237 (1979). Rates must, moreover, provide a constitutional return in the year in which they are in effect. *Bd. of Public Utilities Comm'rs* v. *N.Y. Telephone Co.*, 271 U.S. 23, 70 L.Ed. 808, 812 (1926); *State* v. *N.J. Telephone Co.*, 30 N.J. 16, 28-31 (1959); *Helmsley, supra* at 230. Therefore a regulatory scheme which provides an excessively slow mechanism for the *adjustment* of rates, one which cannot keep up with the realistic needs of the regulated business, may fail to meet constitutional standards on that basis. *Smith* v. *Illinois Bell Telephone Co.*, 270 U.S. 587, 70 L.Ed. 747 (1926), *Helmsley, supra.* Since MCAIC did not follow the available appellate route, it will be unable to establish as an historical matter the inadequacy of that route to provide it with a fair rate. It will have to demonstrate the scheme as provided is inevitably inadequate. In *Helmsley* owners of apartment buildings challenged the validity of a rent control ordinance as denying them a just and reasonable return. The Supreme Court of New Jersey found that the combined impact of the limitation on automatic rent increases with the difficulties of obtaining administrative relief created a confiscatory system. Before deciding that the route to administrative relief was inadequate, the Court reviewed every aspect of it and declared "[w]e are satisfied that the entire hardship structure as administered by the Fort Lee Rent Leveling Board, *could not* afford landlords prompt and efficacious relief . . ." (Emphasis added).

Opinion of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (June 2, 1981)

Since MCAIC asserts that the legislative scheme as written and as applied coercively deterred appeal, and this court must accept this assertion as true (at this time), plaintiff has had no forum. If this is plaintiff's only means of attack, it cannot justly be called collateral. Plaintiff can therefore seek declaratory judgment in this court.

II

As noted in Part I of this opinion if it appears that access to the appellate structure, could not have given MCAIC adequate relief,[8] it could be entitled to a declaration that the statutory scheme is unconstitutional.

On the other hand, should plaintiff carry its burden, would it be entitled to compensation for losses sustained? Under the circumstance here, it would not. Plaintiff relies, in its Count I claim for compensation, on inverse condem-

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[8] The probability of relief must be real. An example of illusory relief is found in the State's argument that if MCAIC finds the industry-wide rate noncompensatory it could file on its own for a rate. It could, in the sense that nothing in the statute prevents the attempt. The State concedes, however, that a single company would be unable to present the statistical evidence necessary to command a rate decision. Yet another example of illusory relief is the possibility of an approved deviation from industry rates, *viz.* special dispensation for a particular company based on its special difficulties. (MCAIC has requested and the Commissioner granted a 7% upward deviation from ISO rates on three categories of insureds.) A deviation, however, places the company at a competitive disadvantage, thereby exacerbating its problems rather than solving them.

nation cases which involve real property. In those cases the government, through one means or another[9] drastically limited the uses the owner could make of its property. In all instances this came about through a governmental decision that some use other than that desired by the property owner was in the best public interest. The property owner had little or no control over this decision.

Plaintiff's position is radically different. Plaintiff owns a business which is part of a regulated industry. The purpose of the regulation is to provide New Jersey residents with insurance at reasonable rates, and to accomplish this purpose the regulators must keep the various participating companies alive and well. Plaintiff, for its part, undertook to do business and to continue in business knowing it would be regulated, that is, that its profits and operations would be circumscribed, but that it could count on the fact that the regulation would have plaintiff's own welfare as an integral part of its regulatory purpose. In these circumstances it is as much in the interest of the regulator as of the regulated that any malfunction in the system be attacked as vigorously and as fast as possible. MCAIC suffered losses; and those may have been caused by regulatory malfunction, which would, as stated above, entitled MCAIC to a declaratory judgment in order to permit the system to correct itself. But to obtain such a judgment MCAIC must act to seek the aid of a court. Had it done

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[9] Regulation enacted by means of zoning or police power may have the same effect. See discussion in *San Diego Gas & Electric Co.* v. *City of San Diego*, U.S. , 49 L.W. 4317 (March 24, 1981).

so earlier, its losses would have been less, and the system would have been healthier. Everyone is the loser for plaintiff's failure to assert its rights at the earliest reasonable time. Only from and after the time plaintiff achieves a declaratory judgment that the regulatory scheme (as applied) is failing to provide an adequate rate, will plaintiff be entitled to claim that any further losses[10] constitute a taking without compensation.[11] Were this not so an industry subject to regulation or any regulated company could abandon the effort to function profitably secure in the knowledge that whenever it chose it could point to its accumulated losses, claim a taking, and force the State to make what amounts to a purchase of assets long lost. The purpose of the regulatory system would be defeated, the treasury emptied (the losses in this regulated industry alone are alleged to be 125 million a year) and the industry would receive an unwarranted windfall.

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[10] See *Helmsley* the Supreme Court of New Jersey found landlords had not been able to demonstrate the constitutional inadequacy of the rate for previous years but could establish the rate would be confiscatory in years to come. Here plaintiff cannot demonstrate how much of its past loss is the result of failure to appeal, either with the administrative system, or without, as it does today.

[11] If plaintiff can demonstrate the inadequacy of the administrative review procedure it would also have a claim for declaration that it has been deprived of property without due process. *Helmsley, supra,* see also discussion in *San Diego Gas & Electric Co.* v. *City of San Diego, supra.*

III

In *In the Matter of the Valuation Proceedings under § 303(c) and 306 of the Regional Rail Reorganization Act*, 439 F.Supp. 1351 (Special Court, Regional Rail Reorganization Act 1977), Judge Friendly, discussed the nature of a claim for compensable unconstitutional erosion.[12]

> Unconstitutional erosion arises only when a losing business has been required to continue to operate against its will for more than a reasonable period. . . . [Two elements are implicit] namely, that the claimant should have made manifest its desire to quit operating and should have applied for authorization necessary to that end, and that some identifiable agency of government having power to do so should have thwarted its desires. [439 F.Supp. at 1356.]

In the present case, plaintiff has made no application to terminate its business. This circumstance would not of itself present an insurmountable barrier to recovery, for if this court finds either that (1) the difficulties of voluntary cessation, under the provisions of the "old act," or (2) the manifest impossibility of such cessation under the act as amended, made it futile to apply, we will not demand that plaintiff have done such

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[12] Subsequent courts have relied on his definition. See, for example, *In the Matter of Penn. Cent. Transportation Co.*, 596 F.2d 1127, 1139 (3rd Cir. 1979).

futile act.[13] On this motion to dismiss (and not now deciding this issue), the court will assume plaintiff is correct and there was (and is) no way out.

An insurmountable barrier is presented, however, by the fact that plaintiff has indicated it did (and does) not seek a way out. Indeed, plaintiff sought in Count IV of its complaint to forestall an anticipated move by the Commissioner to put it out of business by way of a delinquency proceeding. Though plaintiff complains that the statutory format which places the Commissioner in charge of liquidating the company is unfair, it is surely clear that a company experiencing the rapid, steep decline that MCAIC alleges would cut its losses by *any* form of termination, no matter how far from ideal. By thwarting delinquency proceedings, then, MCAIC is itself

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[13] *In Matter of Valuation Proceedings,* at 1364 Judge Friendly notes that in the leading case on erosion taking, *Brooks-Scanlon Company* v. *Railroad Commission of Louisiana,* 251 U.S. 396 (1920) "the railroad had ceased operating, initially with permission, but the . . . Commission . . . had ordered it to resume; Mr. Justice Holmes treated with contempt a suggestion that, despite the full hearing and order by the Commission directing a resumption of operation, the railroad must start a new proceeding with a petition for leave to discontinue which would surely be denied, 251 U.S. at 400." Judge Friendly goes on at 1372 to decide "enactment of the Rail Act should be taken as relieving the various trustees from any further obligation to apply for leave to abandon. As we pointed out in our [earlier] decision [the Act] . . . prohibited abandonments unless authorized by USRA and 'unless no affected . . . regional authority reasonably opposes such action,' a standard which would permit few, if any, abandonments."

responsible for a deepening of its deficit. As a more general proposition, it is clear that a losing company which fights to stay in business cannot be heard to assert that the refusal to let it cease such business is an injury, or that the bill for its accumulating losses must be borne by the government which failed to provide it the way out it would not have taken in any event.

If plaintiff amends its complaint to assert a desire to quit operating, then, and from that time forward only, a cause of action is stated, for only then can it be said that the terms of the statute force plaintiff to continue against its will.[14]

For the reasons stated above we hold that Count I states a claim for declaratory relief only. Counts II and III also state such a claim if amended to assert plaintiff's desire to quit business. We will grant the State's motion to dismiss all claims for compensation in all three counts.

Counsel for defendant should present an appropriate order under R. 4:42-1.

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[14] Even then a question will be presented by the fact that it must be presumed, from plaintiff's pleadings that the Commissioner stood ready for some time to allow plaintiff to discontinue. *In Matter of Valuation Proceedings* at 1369-1387 the issue was how long after the company has applied to abandon (or been relieved of the obligation to do so by passage of the Rail Act, see footnote 13) may it be forced to await permission to do so before the delay constitutes a taking. This was an issue briefly discussed also in *Regional Rail Reorganization Act Cases*, 419 U.S. at 122-25, where the court notes that delay *might* be so excessive as to result in an erosion taking. It is the excessive lag period which may give rise to a claim. It seems improbable there would be delay of constitutional proportions here.

Order of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (July 6, 1981)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—MERCER COUNTY
Docket No. C 702-80E
Civil Action

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants.

This matter having been open to the Court by James R. Zazzali, Attorney General of New Jersey (Mark S. Rattner, Deputy Attorney General appearing), attorney for defendants, in the presence of Carpenter, Bennett & Morrissey, Esqs. (Stanley Weiss, Esq. appearing), attorneys for plaintiff, by motion pursuant to R. 4:6-2(e) for an Order dismissing the Complaint for failure to state a claim upon which relief can be granted; and the Court having con-

Order of the Superior Court of New Jersey, Chancery Division (Honorable William A. Dreier, J.S.C.) (July 6, 1981)

sidered the briefs and other papers in support of and in opposition to said motion and the argument of counsel; and the Court having issued a written opinion dated June 2, 1981, which is incorporated by reference herein; and further good cause appearing,

IT IS on this 6th day of July, 1981

ORDERED that

1. The defendants' motion to dismiss all claims for compensation contained in Counts I, II and III of the Complaint is granted;

2. the defendants' motion to dismiss Count I of the Complaint insofar as said Count I seeks declaratory relief is denied;

3. the defendants' motion to dismiss Counts II and III of the Complaint in their entirety is granted;

4. plaintiff is hereby granted leave to amend Counts II and III of its Complaint to affirmatively assert a desire to cease business;

5. Count IV of the Complaint is dismissed as moot; and

6. with respect to the Orders set forth in ordering paragraphs numbered 1, 3 and 5, the Court hereby determines that there is no just reason for delay and determines that said Orders are final judgments.

WILLIAM A. DREIER, J.S.C.

Order of Supreme Court of New Jersey Dismissing Appeal and Denying Petition for Certification (October 14, 1982)
(Filed—October 14, 1982)

SUPREME COURT OF NEW JERSEY
C-84 SEPTEMBER TERM 1982

20,188

MOTOR CLUB OF AMERICA INSURANCE CO., etc.,

Appellant-Petitioner,

vs.

STATE OF NEW JERSEY, DEPARTMENT OF INSURANCE, et al.,

Respondent-Respondent.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5084/5423-80T3 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs; and it is further

ORDERED that the appeal in the within matter is dismissed pursuant to R. 2:12-9.

Order of Supreme Court of New Jersey Dismissing Appeal and Denying Petition for Certification (October 14, 1982)

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 12th day of October, 1982.

STEPHEN TOWNSEND
Clerk

Notice of Appeal to the Supreme Court of the United States (December 29, 1982)

(Filed—December 29, 1982)

IN THE

SUPREME COURT OF THE STATE OF NEW JERSEY

No. 20,188

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Appellant,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Motor Club of America insurance company, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey, entered on October 14, 1982, which judgment dismissed the appeal of Motor Club of America Insurance Company, and the effect of which was to affirm the June 28, 1982

judgment of the Appellate Division which directed the dismissal of Motor Club of America Insurance Company's Complaint in its entirety.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

CARPENTER, BENNETT & MORRISSEY
Attorneys for Appellant, Motor Club of America Insurance Company
By: ROBERT E. TURTZ
A Member of the Firm

Dated: December 28, 1982

CERTIFICATE OF SERVICE

I, Robert E. Turtz, a member in good standing of the Bar of the Supreme Court of the United States and of the State of New Jersey, hereby certify that on this day I caused a copy of this Notice of Appeal to the Supreme Court of the United States to be served upon the following pursuant to Rule 28.3 of the Rules of the Supreme Court of the United States, by mailing said document, properly addressed, by first-class mail:

Irwin I. Kimmelman
Attorney General of New Jersey
Attorney for Respondents,
State of New Jersey, State of New Jersey Department of Insurance and State of New Jersey Commissioner of Insurance

Notice of Appeal to the Supreme Court of the United States (December 29, 1982)

Attention: John J. Hayden, Esq.
Deputy Attorney General
R. J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

All parties required to be served have been served.

ROBERT E. TURTZ

Dated: December 28, 1982

Verified Complaint (October 27, 1980)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—MERCER COUNTY
Docket No.
Civil Action

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants.

COUNT I

Plaintiff, Motor Club of America Insurance Company ("MCAIC"), a corporation organized and existing under the laws of the State of New Jersey, with offices at 484 Central Avenue, Newark, New Jersey 07107, by way of complaint against defendants, State of New Jersey; State of New Jersey Department of Insurance ("Department"); and James J. Sheeran, New Jersey Commissioner of Insurance ("Commissioner"), states as follows:

Verified Complaint (October 27, 1980)

1. MCAIC was incorporated in the State of New Jersey in 1928 under the name Motorists Casualty Insurance Company and assumed its present name in 1956.

2. Defendant, Department, is a principal department in the executive branch of the State Government of defendant, State of New Jersey.

3. Defendant, Commissioner, is the head and chief executive officer of the Department.

4. MCAIC is engaged in the insurance business and, with its subsidiary, Garden State Life Insurance Company, is authorized to write all lines of insurance, including fire and casualty insurance, life insurance, and allied lines. Although MCAIC writes many lines of insurance, its major business is automobile insurance; in 1979 more than 77% of its net premiums were on account of New Jersey automobile policies.

5. Since its inception in 1928, MCAIC has had a special relationship with New Jersey. Unlike many other insurance companies doing business in New Jersey, MCAIC has substantially limited its business activities in other states, concentrating its efforts toward best serving the insurance needs of the people of New Jersey, particularly in the automobile field. In 1979, by way of example, approximately 90% of MCAIC's net premiums were on account of New Jersey business, and most of this was on account of automobile policies.

6. MCAIC has been a leader in the New Jersey insurance industry, and it has enjoyed a favorable reputation, not only among New Jersey's insurance public,

but among its competitors as well. Therefore, for much of its history, MCAIC prospered as a relatively small, profitable insurance company that has been managed for its entire existence by members of a family that founded it and its corporate parent, Motor Club of America. MCAIC's success over the years was reflected in the fact that at year-end 1973, its surplus as to policyholders was $21,026,296 on a statutory insurance accounting basis and, on the basis of generally accepted accounting principles, its stockholders' equity was $26,098,990.

7. However, legislative and regulatory events, which became effective in 1973, resulted in drastic, adverse changes in the automobile insurance business climate of New Jersey, substantially increasing the losses and the inherent costs to all companies in writing and servicing policies and in paying claims. Specifically, these legislative events included the introduction into New Jersey law of compulsory motor vehicle liability insurance with a resultant influx of new but unprofitable business, and of "no-fault" insurance with unlimited, lifetime personal injury protection coverage; a very low medical bill threshold of $200 for bodily injury suits; and very limited rights of cancellation and nonrenewal of policies.

8. Despite the fact that "no fault" insurance was adopted on the theory that its costs would be borne by the ultimate consumer, *i.e.*, the insureds, in the form of fair and compensatory rates, such has not been the case in New Jersey. As a result of the ever increasing costs and loss experiences brought about, *inter alia*, by the "no fault" and compulsory insurance laws, and because of the regulatory framework requiring prior rate approval by the defendant, Commissioner, and the series

of policies and decisions of the defendant, Commissioner, which when viewed as a totality have been confiscatory in nature, the various rates charged by the insurance companies for New Jersey automobile insurance have been uncompensatory since at least 1974. Since at least 1974 companies, including MCAIC, have repeatedly applied to defendant, Commissioner, for permission to increase their respective rates to make them compensatory. Defendant, Commissioner, purportedly acting pursuant to N.J.S.A. 17:29A-7, has consistently delayed and denied or modified these requests and has arbitrarily left the New Jersey automobile insurance industry with wholly uncompensatory and inadequate rate structures.

9. The noncompensatory rate structures which defendant, Commissioner, forced upon the insurance companies, had the effect of making the companies increasingly reluctant to write new automobile business in New Jersey on a voluntary basis. Consequently, by 1975 the number of persons seeking automobile coverage through the Automobile Insurance Plan (known as the Assigned Risk Plan), which had been established by defendant, Department, pursuant to N.J.S.A. 17:29D-1, substantially increased, and the number continues to increase. In 1976 Government Employees Insurance Company ceased doing business in New Jersey and many of its 300,000 insureds eventually obtained insurance through the Assigned Risk Plan. As a result of the foregoing, and of other companies ceasing or limiting its business in New Jersey, aggravated by insolvencies of certain automobile insurance writers, both large and small, MCAIC's assignments from the Assigned Risk Plan increased from approximately 500 per month in 1976 to 3,000 per month before the end of 1979.

Verified Complaint (October 27, 1980)

10. Under the provisions of N.J.A.C., Title 11, Chapter 3, defendant, Commissioner, has established the rates which may be charged by insurance companies for insurance provided under the Assigned Risk Plan. Such rates are not compensatory to the insurance companies providing insurance through the Assigned Risk Plan. In the case of MCAIC, every dollar of premium received on account of Plan business results in the payout by MCAIC of in excess of $1.40.

11. Defendant, Commissioner's refusal and failure to permit reasonable and compensatory rates for voluntary and Assigned Risk Plan automobile policies have severely and negatively impacted all insurance companies writing automobile policies in New Jersey. As recently stated by Donald C. Brain, President of the Independent Insurance Agents of America, at that organization's convention in New Orleans (quoted in the Star Ledger of October 2, 1980, copy annexed hereto):

> Your [New Jersey's] regulatory authorities—and I refer to State Commissioner James J. Sheeran and Governor Brendan Byrne—have apparently decided on a policy of depressing state premium rates below those called for by experience in the marketplace . . . Commissioner Sheeran has been a little irresponsible in that sense . . . I'd characterize the situation as an attempt by an arm of the government in New Jersey to socialize the assets of insurance companies.

The effects of these policies on most insurance companies—doing substantial nonautomobile as well as profitable automobile business outside the State of New Jersey—have been limited principally to a lessening of their

overall profits. However, the effects upon MCAIC have been far more drastic. Because of MCAIC's almost exclusively New Jersey based business, concentrated in the automobile insurance line, MCAIC's inability to secure compensatory rates has resulted in (a) MCAIC incurring a series of substantial operating losses in the period 1974 through the present and (b) the erosion of MCAIC's surplus to policyholders at December 31, 1979 to $3,209,000 on a statutory basis and to $10,038,000 on a GAAP basis, notwithstanding contributions to MCAIC between 1976 and 1979 of $10,250,000 by MCAIC's parent company, Motor Club of America, and by other companies affiliated with MCA. But for these contributions (and absent any consideration of the value of MCAIC's present claim for damages in inverse condemnation asserted in this action), MCAIC would be insolvent, and its entire surplus destroyed. The plight of MCAIC has recently been described in an issue of *Best's Insurance Management Reports* (August 4, 1980), copy annexed hereto as follows:

> The company [MCAIC] offers a microcosmic look at the auto insurance situation in New Jersey as it has unfolded under the administration of Mr. Sheeran. MCA's [MCAIC] plight is worse than that of other companies only because its business is about 80% in New Jersey's auto insurance market. Lacking sufficient geographic and coverage spread, it has no cushion with which to withstand the crushing combination of a bad no-fault law and a regulatory philosophy that espouses consumerism above all.
>
> Despite the pullout of a number of companies from New Jersey and the glaring need for an adequate rate and reform of the no-fault law, Commis-

> sioner Sheeran has evinced little concern for the plight of the automobile insurers in his jurisdiction. The rationale appears to be that underwriting profits from other lines and other states can carry the New Jersey burden.
>
> • • •
>
> Unlike GEICO, Nationwide, SAFECO and others that have done so, MCA [MCAIC] has no option to withdraw from the state.

As a result of defendants' confiscatory regulatory policies and decisions, MCAIC's assets and equity have been seriously eroded, its earning power has been largely destroyed, and the fair market value of its business has been drastically diminished. Recent attempts to sell the company to, or merge it with, a responsible acquirer have been unsuccessful because of acquirer concerns about defendants' confiscatory regulatory policies and decisions.

12. MCAIC has repeatedly called its plight to the attention of defendant, Commissioner, and it has repeatedly sought rate and related regulatory relief. While some relief has been forthcoming, it has consistently been too little and too late to reverse MCAIC's operating losses or to assure MCAIC a fair opportunity to earn a reasonable return on its investment.

13. The continuing losses which MCAIC has experienced since 1974 have been caused by New Jersey's confiscatory statutory and regulatory framework and the confiscatory regulatory policies and decisions of defendant, Commissioner. By virtue of the foregoing, MCAIC's property has been taken by the State of New Jersey for a public use without just compensation in violation of the

Fourteenth Amendment of the United States Constitution and Article I, Paragraph 20 of the New Jersey Constitution.

WHEREFORE, plaintiff, Motor Club of America Insurance Company, demands judgment in its favor and against defendants as follows:

1. determining that defendants have taken plaintiff's property for a public use entitling plaintiff to just compensation;

2. awarding plaintiff just compensation for the taking of its property;

3. for interest, costs of suit, and attorneys' fees; and

4. for such other and further relief as the Court may determine to be just in the circumstances.

COUNT II

14. Plaintiff, MCAIC, repeats each and every allegation of Paragraphs 1 through 13 of Count I and incorporates them herein by reference.

15. It is the law of the land, as enunciated in the context of another regulated industry in the seminal case of *Brooks-Scanlon Co.* v. *R.R. Comm'n.*, 251 U.S. 396, 399 (1920), that:

> A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business . . . If the plaintiff be taken to have granted to the public an interest in the use of the railroad, it may withdraw its grant by discontinuing the use when that use can be kept up only at a loss.

MCAIC has been converted from a profitable enterprise to a losing venture by the cumulative impact of defendants' legislative and administrative regulations. But, even apart from this impact, defendants have also unconstitutionally denied MCAIC its right to withdraw its assets from the public use and to dispose of them in a manner consistent with the interests of its creditors and shareholders. When governments so act, they are required under the principles set forth by the United States Supreme Court in *Rail Act Cases*, 419 U.S. 102 (1974) to pay compensation for the "erosion taking" of property that has occurred.

16. Prior to June 3, 1975, a domestic insurance company had the right, pursuant to N.J.S.A. 17:30-8, to voluntarily dissolve and liquidate its assets upon compliance with the terms of that statute. That statute, along with the balance of Chapter 30 of Title 17, was repealed, effective June 3, 1975 by L. 1975 c.113 §31. In its place was substituted N.J.S.A. 17:30C-1 through 17:30C-30, "An Act Concerning the Rehabilitation and Liquidation of Certain Insurers" (hereinafter the "Liquidation Act"). N.J.S.A. 17:30C-3 provides that delinquency proceedings pursuant to the Liquidation Act ". . . shall constitute the sole and exclusive method of liquidating . . . . an insurer"; and only defendant, Commissioner, may institute such proceedings. Therefore, since June 3, 1975, MCAIC has not had the right to voluntarily dissolve or liquidate; and the defendants have effectively controlled the destiny of MCAIC—both as to whether it would be permitted to operate profitably and as to when its operations would be brought to a halt and on what terms. Defendants have, therefore, caused MCAIC to incur substantial losses in its operations, compelling it to continue in business with such loss operations, thereby drastically eroding its assets, earning power and marketability.

17. By virtue of the foregoing, MCAIC's property has been taken by the State of New Jersey for a public use without just compensation in violation of the Fourteenth Amendment of the United States Constitution and Article I, Paragraph 20 of the New Jersey Constitution.

WHEREFORE, plaintiff, Motor Club of America Insurance Company, demands judgment in its favor and against defendants as follows:

1. determining that defendants have taken plaintiff's property for a public use entitling plaintiff to just compensation;

2. awarding plaintiff just compensation for the taking of its property;

3. for interest, costs of suit, and attorneys' fees; and

4. for such other and further relief as the Court may determine to be just in the circumstances.

COUNT III

18. Plaintiff, MCAIC, repeats each and every allegation of Paragraphs 1 through 13 of Count I and incorporates them herein by reference.

19. The right to withdraw its assets from the public use that MCAIC had prior to June 3, 1975 was rendered largely illusory by defendants' regulatory system and the business arrangements MCAIC had to enter into to operate under such system. As a consequence, the process of withdrawing from operations and liquidating was so difficult, so time

consuming, and so destructive of the remaining values of the enterprise as to preclude such a course of action from the range of reasonable business decision.

20. By virtue of the foregoing, MCAIC's property has been taken by the State of New Jersey for a public use without just compensation in violation of the Fourteenth Amendment of the United States Constitution and Article I, Paragraph 20 of the New Jersey Constitution.

WHEREFORE, plaintiff, Motor Club of America Insurance Company, demands judgment in its favor and against defendants as follows:

1. determining that defendants have taken plaintiff's property for a public use entitling plaintiff to just compensation;

2. awarding plaintiff just compensation for the taking of its property;

3. for interest, costs of suit, and attorneys' fees; and

4. for such other and further relief as the Court may determine to be just in the circumstances.

COUNT IV

21. Plaintiff, MCAIC, repeats all of the allegations of Paragraphs 1 through 20 of the Complaint and incorporates them herein by reference.

22. Pursuant to N.J.S.A. 17:30C-3, the Liquidation Act provides the sole and exclusive method of liquidating,

rehabilitating . . . an insurer, and only defendant, Commissioner, may institute such action.

23. Pursuant to N.J.S.A. 17:30C-7a. and 17:30C-9a., a rehabilitation order and a liquidation order shall, respectively, direct the Commissioner to take possession of the property of the insurer. Furthermore, whenever a receiver is to be appointed in delinquency proceedings, N.J.S.A. 17:30C-15a. requires the appointment of Commissioner as such receiver.

24. Pursuant to N.J.S.A. 17:30C-6a. and 17:30C-8, the defendant, Commissioner, may commence delinquency proceedings looking toward rehabilitation or liquidation if the insurer is impaired or insolvent. By letters dated September 29, 1980 and October 10, 1980, defendant, Commissioner, has advised MCAIC that he has concluded that MCAIC's capital was impaired as at June 30, 1980.

25. By virtue of the foregoing there is a material risk that defendant, Commissioner, will commence delinquency proceedings against MCAIC in the near future on the ground that it is allegedly impaired and that defendant, Commissioner, will in said proceedings be appointed receiver for MCAIC.

26. The commencement of such delinquency proceedings will cause irreparable injury to MCAIC in the following respects:

(a) it will deliver actual possession of the assets and business of MCAIC to the defendant, Commissioner, whose policies and decisions over the past six years have converted MCAIC from a profitable enterprise to a losing venture. Such delivery

of possession will constitute the final step in the creeping condemnation of MCAIC's assets and business, which have been occurring over the past six years, without a correlative deposit of the fair value of such assets and business necessary to assure the constitutionality of the final and complete taking that will occur;

(b) the defendant, Commissioner, will be placed in a position of irreconcilable conflict of interest with respect to two principal responsibilities of any receiver in such a proceeding. The first responsibility would be to seek the rehabilitation of MCAIC which would require the prosecution of litigation in an appropriate forum against the defendant, Commissioner, to obtain the regulatory relief which can assure MCAIC's continued viability and which the defendant, Commissioner, is required by constitutional principles to grant under the present circumstances. The second responsibility will be to aggressively prosecute the within litigation to recover for MCAIC the damages to which it is entitled for the erosion takings set forth above in Counts I through III of this Complaint. The defendant, Commissioner, obviously is not in a posi- to fulfill either of those responsibilities; and there is no reason to expect that such undertakings could or should be adequately financed by other interested parties;

(c) it will destroy MCAIC's reputation and goodwill; it will result in the cancellation of MCAIC's multistate licensing (one of its principal remaining assets developed over many years); it will severely undermine employee and management morale; and

it will destroy all reasonable chance for MCAIC to assure its continued viability.

27. The commencement of such delinquency proceedings is unnecessary because:

(a) MCAIC denies that its capital was impaired at June 30, 1980 and further states that if any such impairment arises in later periods, it will use its best efforts to cure same. Among the measures available to it are the sale of assets at prices in excess of book value, the negotiation of reinsurance arrangements, and the potential of receiving additional contributions from its corporate parent;

(b) MCAIC will promptly seek to review in an appropiate forum the defendant, Commissioner's refusal to grant the regulatory relief which MCAIC has been seeking. Projections prepared for MCAIC, and thoroughly reviewed by defendants, indicate that such relief would put an end to MCAIC's losses and assure its continued viability; and

(c) MCAIC is presently conducting its business in the ordinary course and paying all valid claims in a timely fashion; and it expects to continue to do so for the foreseeable future.

28. MCAIC, therefore, respectfully prays that defendant, Commissioner, be enjoined from commencing such delinquency proceedings pending the completion of each of the following:

(a) a determination as to whether N.J.S.A. 17:30C-1, *et seq.* is unconstitutional as applied to MCAIC for the reasons set forth in Count II above, which determin-

ation can and should be promptly made since the material facts bearing on the issue should not be in dispute;

(b) a determination as to whether the application of N.J.S.A. 17:30C-1, *et seq.* to MCAIC would unconstitutionally deprive it of its due process of law because, under the present circumstances, such application would require placing defendant, Commissioner, in a position of irreconcilable conflict of interest;

(c) a determination as to the amount of compensation to which MCAIC is entitled by virtue of the erosion taking set forth in Counts I through III above, which determination is required to properly assess MCAIC's present financial condition;

(d) a determination as to whether MCAIC has suffered an impairment in its capital which cannot be promptly corrected;

(e) the results of MCAIC's efforts to obtain in another judicial forum appropriate regulatory relief which will assure its continued viability; and

(f) a determination as to whether the application of delinquency proceedings to MCAIC would constitute a taking of the assets and business of MCAIC requiring a deposit sufficient to pay for the fair value of the assets and business so taken for the public use.

WHEREFORE, plaintiff, Motor Club of America Insurance Company, demands judgment in its favor and against defendants as follows:

Verified Complaint (October 27, 1980)

1. temporarily, preliminary and finally enjoining defendant, Commissioner, from commencing delinquency proceedings against plaintiff, MCAIC, under the Liquidation Act, N.J.S.A. 17:30C-1 through 17:30C-30;

2. temporarily, preliminarily and finally enjoning defendant, Commissioner, from taking possession of any property of MCAIC or from being appointed receiver of MCAIC in the event that delinquency proceedings of any sort should be commenced against plaintiff MCAIC.

3. declaring that MCAIC is neither impaired nor insolvent;

4. for costs of suit and attorneys' fees; and

5. for such other and further relief as the Court may determine to be just in the circumstances.

CARPENTER, BENNETT & MORRISSEY
Attorneys for Plaintiff, Motor Club of America Insurance Company

STANLEY WEISS
ROBERT E. TURTZ
Members of the Firm
By: STANLEY WEISS

Verified Complaint (October 27, 1980)

VERIFICATION

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

David Green, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am President of plaintiff, Motor Club of America Insurance Company ("MCAIC"), and I am personally familiar with the factual allegations set forth in the Compaint. The facts set forth therein are true of my own knowledge.

DAVID GREEN

Sworn to and subscribed
before me this 20th day
of October, 1980

JEAN A. HEINZE
Notary Public of New Jersey
My Commission Expires April 3, 1985

Exhibit A to Verified Complaint

Star Ledger, October 2, 1980

AGENTS ACCUSE STATE OF DRIVING UP RATES

By Alexander Milch

NEW ORLEANS—New Jersey motorists buying automobile insurance are in effect being subsidized by the rest of the country, Donald C. Brain of Kansas City, president of the Independent Insurance Agents of America (IIAA) charged yesterday.

In an interview at the 84th annual IIAA convention here, Brain said that "politically motivated" low premium rates imposed by New Jersey force insurance companies remaining in the state to make up for their losses by use of retained earnings, which in turn must be rebuilt by higher premium levels elsewhere.

"Your regulatory authorities—and I refer to State Commissioner James J. Sheeran and Governor Brendan Byrne —have apparently decided on a policy of depressing state premium rates below those called for by experience in the marketplace," he said. "Commissioner Sheeran has been a little irresponsible in that sense."

• • •

"I'd characterize the situation as an attempt by an arm of the government in New Jersey to socialize the assets of insurance companies."

Brain said that he has become quite familiar during his year in office with the auto insurance crisis in New Jersey, which the industry claims is the country's worst.

Exhibit A to Verified Complaint

Many companies have pulled out of the state, he said, because authorities won't permit them to charge enough to make up for underwriting losses.

Those companies which have stayed on despite their losses often minimize coverage as much as possible and don't introduce new products which are made available elsewhere in the country, he said.

Reluctance of companies to underwrite voluntary business has increased the population of the assigned risk plan in New Jersey to more than 35 per cent of all motorists as against 1.5 per cent in Missouri, his home state, Brain said.

Unlike New Jersey, which mandates prior approval by the state insurance commissioner before insurance companies can change their rates, Missouri permits changes by companies, subject to later review by the state.

Under assigned risk, companies take turns in issuing policies to motorists unable to obtain coverage in the regular marketplace.

As an immediate help to the New Jersey situation, the legislature there should adopt a "verbal threshold," under which pain-and-suffering suits would be limited to specific serious injuries and to disabilities lasting over specified periods of time, he said.

Lawyers opposing the verbal threshold are doing so for "selfish reasons," Brain said. Litigation is now possible whenever medical costs of an accident victim exceed $200.

Brain had high praise for the Independent Insurance Agents of New Jersey for fighting for a verbal threshold.

Exhibit A to Verified Complaint

It is an example of why insurance regulation should be kept on a state rather than a federal level, he said.

Speakers at yesterday's convention session including Robert E. Merriman, president of Acord Corp. of Oradell, N.J. which designs and prints industry-wide forms for insurance claims and other purposes.

It was announced that the new joint advertising program of insurance companies and the IIAA has raised $5 million for advertising in opposition to direct writers. The latter employ their own workers to sell insurance, while regular insurance companies sell through independent agents.

Exhibit B to Verified Complaint

(Opposite) ☛

BEST'S INSURANCE MANAGEMENT REPORTS

Property/Casualty
Release No. 9
August 4, 1980

A.M. Best Compan
Oldwick, N.J. 0885
201-439-2200

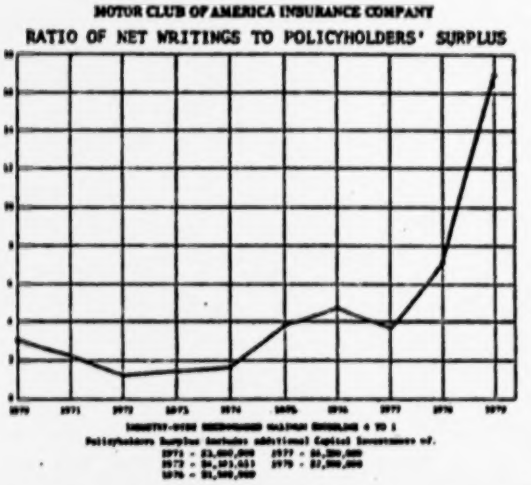
Financial News | Washington Review | Statistical Studies | Perspectives

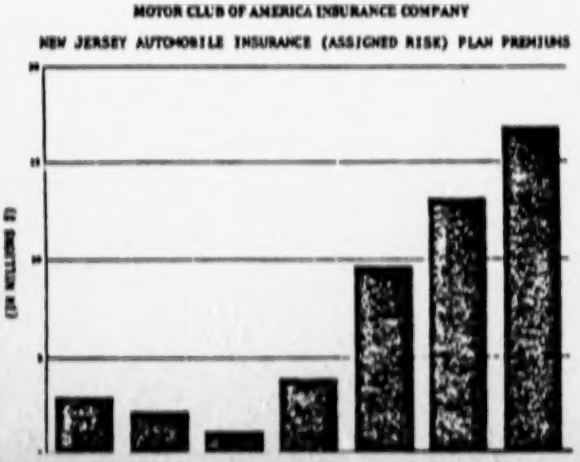
Preliminary "Special Report" on New Jersey Auto Insurer Is Due Next Week

Next week, Kramer Capital Consultants is scheduled to present its preliminary report on the condition of Motor Club of America Insurance Company to New Jersey insurance commissioner James J. Sheeran. The report, which will describe the findings of a "special audit," is being conducted at the request of the commissioner but at the expense of the insurer and is supposed to determine how much "extraordinary relief" the commissioner should grant MCA. The company is requesting an auto insurance rate increase of 31.7%, permission to non-renew its assigned risk customers, a continuation of its moratorium on acceptance of new assigned risks, and permission to refuse to renew certain of its voluntary business. This special review by Kramer was ordered by the commissioner despite the presence of department examiners at MCA since October 1979.

A special audit isn't needed to show that the situation at MCA is serious. The company offers a microcosmic look at the auto insurance situation in New Jersey as it has unfolded under the administration of Mr. Sheeran. MCA's plight is worse than that of other companies only because its business is about 80% in New Jersey's auto insurance market. Lacking sufficient geographic and coverage spread, it has no cushion with which to withstand the crushing combination of a bad no-fault law and a regulatory philosophy that espouses consumerism above all.

Despite the pullout of a number of companies from New Jersey and the glaring need for an adequate rate and reform of the no-fault law, Commissioner Sheeran has evinced little concern for the plight of the automobile insurers in his jurisdiction. The rationale appears to be that underwriting profits from other lines and other states can carry the New Jersey burden. Legislative, regulatory and pricing constraints are such that virtually no new voluntary auto policies are written in the New Jersey market. New drivers, with rare and ever-decreasing exception, go directly into the New Jersey Automobile Insurance Plan, so that, at this point, some 40% of the insured drivers in the state are assigned risks.





The state has a compulsory no-fault law that has been termed the worst in the country – it contains an extremely low ($200) tort threshold coupled with an unlimited medical provision, so that suits abound and catastrophic losses have become considerably more numerous. At the same time, thanks to recent legislation, assigned risk policies provide liability coverage up to a $100,000/$300,000 limit, an amount that assures assigned losses will be "too big to eat." Overseeing this conglomeration of laws and rules that almost seem designed to produce an underwriting loss is an insurance commissioner who has steadfastly refused to approve rates commensurate with the coverages provided. In the case of the Motor Club, with auto insurance as the primary business and with 40% of that business coming in as assigned risks, the consequences have been disastrous.

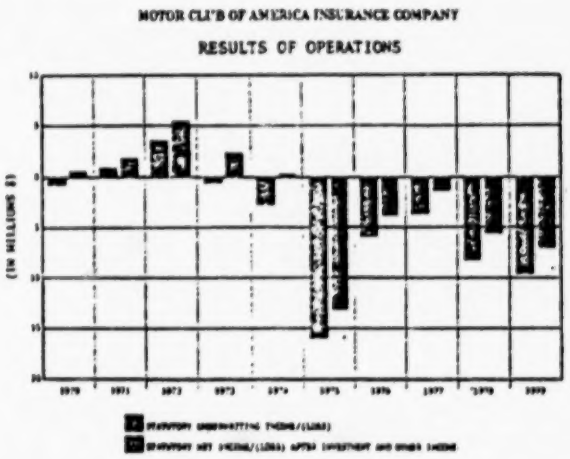
Since 1971 the management of MCA Insurance Co. has found it necessary and has been able to add nearly $18 million

to the company's capital and surplus; but all of that money, plus investment gains, plus income tax recoveries arising out of underwriting losses, has been lost in the auto market – and on top of that, policyholders' surplus has been drained during the period from just under $7 million at the start of 1971 to $3.2 million at the close of 1979.

MCA's current premiums written-to-surplus ratio is 17 to1, a figure that would boggle most minds – but not that of Mr. Sheeran, who when told by MCA that Connecticut was about to order the company to withdraw from that state because writings to surplus were so far out of line, responded that such ratios "don't mean a damn thing to me." MCA solved its Connecticut difficulty by putting up an escrow account and it is running off that business.

Considering the circumstances prevailing in New Jersey, infusion of more money into MCA Insurance would be a highly questionable, if not reckless, action. In the absence of rate or underwriting concessions, a buy-out of the holding company's auto club and other assets and discontinuance and run-off of the insurance operation seem to be the only ways to avoid a major insurance company insolvency.

Commissioner Sheeran was quoted in a Newark newspaper as admitting that MCA's failure "would have a material impact on my ability to maintain orderly markets in the automobile insurance lines." He has proclaimed the special audit by Kramer to be a "rescue mission" for MCA. Unlike GEICO,



Nationwide, SAFECO and others that have done so, MCA has no option to withdraw from the state.

It is difficult to see how the interests of the public, the industry or the State of New Jersey could be served if MCA is put into rehabilitation. While the loss of the company could prompt rate and regulatory reform, it would be at the expense of throwing more than 100,000 drivers onto a contracting market and raising questions about the adequacy of state insurance regulation.

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Affidavit of David Green (November 12, 1980)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—MERCER COUNTY
Docket No. C 702-80E
Civil Action

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,
Plaintiff,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,
Defendants.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

DAVID GREEN, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am David Green, and reside at 15 Lowell Place, West Orange, New Jersey. I was graduated from Lehigh University in 1922 with a Naval Engineering Degree and obtained an LL.B degree in 1926 from Rutgers University

Affidavit of David Green (November 12, 1980)

Law School. I was admitted in New Jersey as an Attorney-at-Law in 1925 and as a Counsellor-at-Law in 1928. I was an original incorporator and founder of Motor Club of America and Motor Club of America Insurance Company and have been an officer and director of both for many years. Since 1954, I have served as President and General Counsel of both Companies and their affiliates.

2. My affiliations with the insurance industry are as follows:

a) Vice Chairman of the Committee on Automobile Insurance Law of the Insurance Section of the American Bar Association, and the first automobile insurance editor of "The Forum";

b) Member of National Conference of Lawyers, Insurance Companies and Adjusters since 1960. Co-Chairman 1975-1977;

c) Member of the Federation of Insurance Counsel and its Secretary-Treasurer in 1962-1963, President 1964-1965 and Chairman of the Board 1965-1966;

d) Member of the Board of Governors of the National Association of Independent Insurers, since 1953, and its President in 1962-1963;

e) Elected as a Member of the Board of Directors of the New Jersey Insurance Underwriting Association (FAIR PLAN), pursuant to NJSA 17:37A-5, since its inception in 1968, and have been elected as the Chairman of the Board of Directors since 1975;

f) Elected as a member of the Board of Directors of the New Jersey Property-Liability Insurance Guaranty Association, pursuant to NJSA 17:30A-7, since its incep-

tion in 1974, which election has been subject to the approval of the Commissioner of Insurance, and presently am the Treasurer of the Association;

g) Elected as a member of the Governing Committee of the New Jersey Automobile Insurance Plan, pursuant to NJAC 11:3-1.4 since 1972, and prior thereto as a member of the Governing Committee which administered the Assigned Risk Plan;

h) Appointed by the defendant Commissioner of Insurance as a director of the Board of the Special Joint Underwriting Association pursuant to NJSA 17:30B-6, since its inception in 1974;

i) Appointed in 1977 by the President of the New Jersey Senate as a member of the No-Fault Study Commission;

j) Trustee of the New Jersey State Safety Council since 1974; and

k) Member in 1976-1977 of the Advisory Board of the National Insurance Development Program, appointed by the Secretary of Health, Education and Welfare.

I have also received the following awards: Defense Research Institute Service Award in 1968; Insurance Man of the Year from the Brokers Association of New Jersey in 1975; the New Jersey State Bar Association Service Award in 1972; the Lehigh University Alumni Award in 1972, and the Federation of Insurance Counsel Man of the Year Award in 1974.

3. Motor Club of America was incorporated in New Jersey in 1933 as "Automobile Association of New Jersey", the successor to a New Jersey corporation organized

in 1926. The name Motor Club of America was adopted in 1958. Since 1926, Motor Club of America has operated a motor club and since 1946, Motor Club of America has offered financing and travel services related to its motor club operations. Motor Club of America, through a subsidiary, Moderncare Centers of America, Inc., opened a rehabilitation hospital in February 1975. Motor Club of America was founded by members of the Green Family, who have served as directors and key officers in the management of all Motor Club of America Companies.

4. Motor Club of America Insurance Company (the plaintiff in this action) was founded in 1928 as "Motorists Casualty Insurance Company." The present name was adopted in 1956. Motor Club of America owns 92.9% of the Common Stock of Motor Club of America Insurance Company, which, in turn, owns 98.6% of the Capital Stock of Garden State Life Insurance Company, a New Jersey life insurance company which isued its first policies in 1957.

5. There are 13 members of the Board of Directors of Motor Club of America Insurance Company, five of whom are members of the Green Family. Of the non-family members of the Board, all except the head of the Electronic Data Processing Department have been with the Company since at least 1950.

6. Both Motor Club of America and Motor Club of America Insurance Company are public companies whose Common Stock is sold in the NASDAQ Over-the-Counter List. Over 60% of the Common Stock of Motor Club of America is owned by public stockholders and approximately 7% of the Common Stock of plaintiff is so owned.

Affidavit of David Green (November 12, 1980)

7. The Common Stock of Motor Club of America traded as high as 29½ in the second quarter of 1972 and the Common Stock of plaintiff traded as high as 18 in the third quarter of 1972. During 1980, the highest bid price of Motor Club of America's Common Stock was 4¼, and the lowest was 1⅝, and the highest bid price of Motor Club of America Insurance Company's Common Stock was 4, and the lowest was 1¾.

8. Motor Club of America has been attempting to find a responsible purchaser or merger partner for the plaintiff or the parent's entire enterprise. The efforts to date have been unsuccessful, and the principal reason for the lack of success has been the reluctance of potential purchasers to become involved in the automobile insurance business in New Jersey under its existing system. For example, the chief executive officer of a major company, with whom we had such discussions, has informed me that his company will stay out of New Jersey until the regulatory climate improves substantially, if it ever does. He cited the defendant Commissioner's failure to respond quickly and effectively to our requests for relief submitted in March 1980. He indicated that the analysis of A. M. Best Co. Inc. in its Management Report dated August 4, 1980 (copy of which is attached to the Complaint as Exhibit B) was correct—i.e., that after adding so many millions in new capital, just to see it drained away by the New Jersey system, to further put capital into Motor Club of America Insurance Company seems like "a highly questionable, reckless action".

9. The surplus as to policyholders of plaintiff at December 31, 1973 was $21,026,296 on a statutory insurance accounting basis and, on the basis of generally

accepted accounting principles, its stockholders' equity was $26,098,990. Notwithstanding the infusion of $10,250,000 by the parent, Motor Club of America, and its subsidiaries during the intervening years, at December 31, 1979, the surplus as to policyholders of plaintiff was $3,209,187 on a statutory insurance accounting basis and, on the basis of generally accepted accounting prinicples, its stockholders' equity was $10,038,098.

10. Prior to the mid-1970's, the MCA Companies and the MCA Insurance Companies grew and prospered. Motor Club of America Insurance Company reported positive net income over a protracted period of time. However, commencing in 1975, Motor Club of America Insurance Company began reporting losses and in the period 1975-1979 incurred losses totalling $31,630,808 on a statutory basis and $25,093,620 on a generally accepted accounting principles basis.

11. In my opinion, the erosion of earning power, surplus and marketability reflected in paragraphs 7, 8, 9 and 10 above, was caused by the dramatic legislative changes in New Jersey applicable to the automobile insurance business introduced in the mid 1970's, and the nature of the administration of those laws and others by the defendant Department. Specifically:

a) Effective January 1, 1973, automobile and motor vehicle liability insurance became compulsory, resulting in an influx of new but unprofitable business;

b) No-Fault insurance with unlimited lifetime personal injury protection coverage, with a very low medical bill

threshold of $200 for bodily injury suits, also became effective January 1, 1973;

c) To the statutorily mandated limitations on cancelling automobile insurance policies within the term of the policy, effective January 1, 1973, automobile insurers were required to renew all policies with the same coverages, subject to limited exceptions permitted by regulation;

d) In June 1975, the right of a domestic insurance company to voluntarily dissolve and liquidate its assets was withdrawn;

e) The unforeseen developments in the Automobile Insurance Plan resulted in an increase of assignments from 500 per month in 1976 to 3,000 per month in 1979;

f) There were a series of rate decisions by the defendant Commissioner, not only for the business which is voluntarily written, but also for business which is written in the residual market (the New Jersey Automobile Insurance Plan, for example), which in summary generally have provided "too little and too late"—and were issued under coercive circumstances, as illustrated by the events recited in the affidavit of William Irwin, filed contemporaneously herewith.

12. The changes in the regulatory environment introduced in the mid 1970's and enumerated above, added to a full system of regulation then existing which controlled (a) the amounts of capital and surplus required to do business, (b) the nature of investments which could be made, (c) the rates which could be charged by requiring the prior approval, (d) the form and provisions of insurance contracts, (e) changes in ownership and control of insurance companies, and (f) holding company insurance transactions. The effect of this system, as

supplemented by the developments enumerated in paragraph 11 above, has placed the destiny of a domestic insurance company servicing the New Jersey auto market into the hands of the State. The State decides the nature of the product to be sold, the persons to whom it is sold, the price at which it is sold, and decides as well whether, when and on what terms such a company may be liquidated, rehabilitated or transferred.

13. My opinion, stated above, that the erosion in plaintiff's earning power, net worth and marketability has been caused by the State's regulatory system, is supported by:

(a) the pervasiveness of the State's control over plaintiff's destiny, as indicated in paragraphs 11 and 12 above,

(b) the experience of other carriers under that system, which has been described in the affidavit of Robert J. Schraeder, submitted simultaneously herewith,

(c) the conclusions of the defendant Insurance Commissioner's own consultants, Kramer Capital Consultants, Inc., who in its report filed October 27, 1980, stated:

> "Until the early 1970's MCA was generally a profitable operation. However, changes in the auto insurance environment and MCAIC's reliance on one line of business in one state began to negatively impact the insurance company in 1974. Since then, MCAIC has incurred heavy underwriting losses which have translated into reduced surplus for the insurer and in earnings deficits for both MCAIC and MCA."

Affidavit of David Green (November 12, 1980)

While plaintiff has considerable reservations concerning the purposes, fairness and accuracy of the Kramer Capital Consultants, Inc. report, its observations quoted above underscore the obvious fact that it is the "changes in the auto insurance environment" which has converted plaintiff from a profitable enterprise to a losing venture,

(d) my personal knowledge that plaintiff's present circumstances have been brought about by the impossibility of profitably adapting to the regulatory change which has occurred in New Jersey since the mid-1970's. We have felt the impact of these changes more severely than others, for obvious reasons. Although Motor Club of America Insurance Company writes many lines of insurance, its major business is automobile insurance and, in 1979, more than 77% of its net premiums were on account of New Jersey automobile insurance policies, thus plaintiff has neither profitable automobile insurance outside of the State of New Jersey nor a sufficient amount of non-automobile insurance to offset the New Jersey automobile insurance losses. During the years 1975-1979, Motor Club of America Insurance Company lost $31,634,621 from its automobile insurance business, more than wiping out the surplus it had accumulated over the years. Many foreign insurance companies have acted in the past few years in various ways in order to stop or lessen automobile insurance losses in New Jersey. Such action included the withdrawal of insurance companies from writing all business in New Jersey, to the cancellation of agents' contracts, to the decision not to write any new automobile insurance policy in New Jersey. The law has precluded plaintiff from ceasing its business operations.

Affidavit of David Green (November 12, 1980)

14. I do wish to comment upon the present financial circumstances of plaintiff. In the Quarterly Statement as of June 30, 1980 of Motor Club of America Insurance Company, dated August 8, 1980 and filed with the defendant Department of Insurance, the surplus as regards policyholders was $2,420,677. In an Inventory of the Assets, Liabilities and Surplus of the Motor Club of America Insurance Company as of June 30, 1980, which is dated August 14, 1980, certain adjustments for special evaluations were made by defendant Insurance Department examiners, resulting in an allegation that the surplus as regards policyholders as at June 30, 1980 actually was $1,247,956, or $1,172,721 less than as reported by Motor Club of America Insurance Company. There would be an impairment in the capital of Motor Club of America Insurance Company in the event the surplus as regards policyholders was below $2 million. Thus, a dispute exists as to our accounting at June 30, 1980.

15. As public companies, both Motor Club of America and Motor Club of America Insurance Company must prepare and file with the Securities and Exchange Commission financial statements prepared in conformity with generally accepted accounting principles, which, as to Motor Club of America Insurance Company and Garden State Life Insurance Company, vary from reporting practices prescribed or permitted by defendant Department of Insurance. The major differences between statutory accounting and generally accepted accounting principles follows. (Other differences between the two methods of accounting, in the aggregate, are not material):

(i) For both generally accepted accounting principles and statutory accounting, insurance premiums are taken into income on a pro rata basis over the lives

of the policies. However, under statutory reporting, the expenses in connection with such premiums (such as commissions, premium taxes and certain other underwriting expenses) are charged to expense at the time the policy is written, instead of being matched with the premiums over the life of the policies. Under generally accepted accounting principles, such expenses are deferred and amortized to expense over the same period as the related premium income;

(ii) In addition, certain assets and liabilities, such as furniture and fixtures, prepaid expenses, certain past due receivables and deferred taxes are not recognized as assets or liabilities for statutory reporting purposes.

Under generally accepted accounting principles, plaintiff's stockholders' equity at June 30, 1980 was $8,528,001.

16. Thus the circumstances of plaintiff's surplus as of June 30, 1980 are that the surplus (net worth) is well in excess of $2 million on a generally accepted accounting principles basis, and that on a statutory basis the plaintiff shows a surplus of approximately $2.4 million and the defendant Department's examiner claim approximately $1.2 million. However, even if the defendant Department's examiners were correct in their adjustments, and Motor Club of America Insurance Company questions this, there are methods by which any such impairment can be corrected. These methods include: (a) Obtaining reinsurance, quota share, or surplus relief treaties, which transfers to the reinsurer the expenses incurred at the time the policies were written (which as noted in paragraph 15 must be expensed

at the outset for statutory purposes). Thus, the surplus is increased in the full amount of the transferred expense; (b) Gains or sales of assets owned by Motor Club of America Insurance Company at prices in excess of statutory book value; e.g. it is generally conceded that the market value of Garden State Life Insurance Company, a subsidiary of plaintiff, is at least $2 million to $4 million in excess of statutory book value; (c) Infusing capital from the parent corporation and affiliates or from other sources, including potential purchasers or merger partners; and (d) Future earnings from operations which Motor Club of America Insurance Company would receive if it obtained the reguatory relief to which it is entitled.

17. Motor Club of America Insurance Company presently is able to operate its business in the ordinary course; its cash position is strong; it is paying claims on a timely basis; and there is no current threat to policyholders, claimants or the New Jersey public. Motor Club of America Insurance Company files on a quarterly basis financial statements not only with the defendant Department of Insurance on a statutory insurance accounting basis, but also with the Securities and Exchange Commission on a generally accepted accounting principles basis. Its calendar year financial statements filed with the Securities and Exchange Commission are audited by its independent certified public accountants, Coopers and Lybrand. Thus, the defendant Commissioner of Insurance will have every opportunity to monitor the progress of plaintiff Motor Club of America Insurance Company in its continued operation. If any unforeseen developments occur, defendant Commissioner has the authority to apply to this very same Court for relief.

Affidavit of David Green (November 12, 1980)

18. The filing of delinquency proceedings against plaintiff, which is imminently threatened, will irreparably injure the plaintiff in at least the following respects:

a) It will injure the good will and reputation of Motor Club of America Insurance Company, unfairly tainting it with the label of insolvency and all that that implies for its routine business dealings with customers and creditors. Defaults may be declared in credit arrangements; policyholders may be deterred in the voluntary market from purchasing insurance from Motor Club of America Insurance Company; plaintiff's cash flow could be impacted by the presentation of claims on an accelerated basis, and the withholding of the payments of premiums when due. Difficulties will be raised in obtaining reinsurance, and employee and management morale of many persons who have devoted their life's work to the company will be damaged;

b) The risks that Insurance Departments around the country will call upon plaintiff to surrender its certificate of authority as a foreign company in those states will be seriously increased. One of the principal assets of plaintiff, which should be of substantial value to a potential purchaser or merger partner, is its nationwide licensing system developed over many years. The efforts of Motor Club of America Insurance Company actually to transact insurance business in other states, which it diligently pursued, has in recent times been seriously deterred by the negative operating results and financial condition which has resulted from the impact upon it of the defendants' insurance regulatory system. Massachusetts, Connecticut and Florida already have re-

quested and obtained our withdrawal from transacting insurance business in their respective states.

c) Most important, it threatens to deliver the actual possession of the assets and business of Motor Club of America Insurance Company to the defendant Commissioner whose policies and decisions in recent years have converted plaintiff from a profitable enterprise to a losing venture. Such a surrender of possession would not have been as objectionable if it had occurred at an earlier time, before plaintiff's surplus had been so badly eroded to its present low level, or if there was an assurance of compensation for the assets to be taken and the injury previously caused. But in the present circumstances such a taking without the assurance of compensation will result in disaster to plaintiff, with a material risk that our assets and business will be transferred to a third party at bargain basement rates. Plaintiff can still be a viable company with adequate regulatory relief, but not otherwise; and delinquency proceedings will not produce that relief. What plaintiff requires now is persons in its control with the determination to seek such relief and to restore its financial substance in the prosecution of its inverse condemnation claim. It is apparent to me that the defendant Commissioner is not in a position to assume such a role. The commencement of delinquency proceedings threatens to place defendant Commissioner in an untenable position faced with profound conflicts of position, thereby depriving the plaintiff of both the leadership and resources required to wage the battle which must be fought if

plaintiff is to remain viable and to receive the recoveries to which it is entitled under the State and Federal Constitution.

DAVID GREEN

Sworn and subscribed to
before me this 7th day
of November, 1980.

JEAN A. HEINZE
Notary Public of New Jersey
My Commission Expires April 3, 1985

Order of the Appellate Division in *Automobile Insurance Plans Service Office* v. *James J. Sheeran*, No. A-1024-77 (April 25, 1978)

(Filed—April 25, 1978)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-1024-77

Motion No. M-2638-77

Before Part C

Judges: Fritz, Botter and Ard

AUTOMOBILE INSURANCE PLANS SERVICE OFFICE, ETC.

vs.

JAMES J. SHEERAN, ETC.

Moving Papers Filed: April 4, 1978

Answering Papers Filed: April 17, 1978

Date Submitted to Court: April 19, 1978

Date Decided: April 24, 1978

This matter having been duly presented to the Court, it is hereby ordered as follows:

Order of the Appellate Division in Automobile Insurance Plans Service Office v. James J. Sheeran, No. A-1024-77 (April 25, 1978)

Cross motion to dismiss appeal or for a remand to supplement the record—Granted.

Supplemental:

Appellant's purported appeal is from an administrative approval of appellant's submission. The relief sought by appellant in the agency was granted, not denied. The appeal from this action obviously seeks a declaratory judgment concerning much more. Since there is no pending justiciable controversy, the appeal is dismissed.

For the Court:

JOHN W. FRITZ, P.J.A.D.

Witness, the Honorable John W. Fritz, Presiding Judge of Part C, Superior Court of New Jersey, Appellate Division, this 24th day of April 1978.

ELIZABETH MCLAUGHLIN
Clerk of the Appellate Division

Affidavit of Robert J. Schraeder (November 12, 1980)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION—MERCER COUNTY
Docket No. C-702-80E
Civil Action

MOTOR CLUB OF AMERICA INSURANCE COMPANY, a corporation of the State of New Jersey,

Plaintiff,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Defendants.

STATE OF NEW JERSEY, }
COUNTY OF HUNTERDON, } ss.:

ROBERT J. SCHRAEDER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am Vice President of A. M. Best Co., Inc., Ambest Road, Oldwick, New Jersey.

2. Since 1899, A. M. Best Co., Inc. has been preparing studies and publishing information regarding the

financial position, history and transactions of insurance companies and branch offices of foreign companies operating in the United States and Canada, writing fire, marine, casualty, accident and health, surety and allied classes of business. On companies licensed to do business in the United States, Best's Policyholders' Ratings or Best's General Ratings are presented, indicating our opinion of the comparative position of each company or association, measured by industry averages.

3. Attached as Appendix A is Introduction to the Best's Insurance Reports—Property-Casualty of 1980, which explains the Best's Ratings.

4. The reports on Motor Club of America Insurance Company which appeared in the Best's Insurance Reports—Property-Casualty for the years 1970 through 1979, respectively, show the Rating of Motor Club of America Insurance Company as A+ (Excellent) for the years 1970 through 1974, B+ (Very Good) in 1975, B (Good) in 1976 through 1978 and C (Fair) in 1979.

5. Attached as Appendix B is copy of Best's Insurance Management Reports—Property-Casualty Release No. 9, dated August 4, 1980, which was prepared in the ordinary course of business of A. M. Best Co., Inc.

6. Also in the ordinary course of its business operations, A. M. Best Co., Inc. has analyzed the automobile insurance experience of the 15 leading New Jersey insurers. The results of that study are attached as Appendix C. In 1979, New Jersey automobile insurers paid out $201 million more in automobile acci-

dent claims and expenses than were collected in premiums. This loss from underwriting was offset by investment income and realized gains of $63,200,000, resulting in a $137,800,000 loss from writing New Jersey automobile insurance. This $137,800,000 loss in 1979 compares with the following losses in previous years:

$109,900,000 in 1978
63,300,000 in 1977
145,500,000 in 1976
168,600,000 in 1975;

a total of $625,100,000 in New Jersey automobile insurance losses for the five year period 1975-1979.

7. I am aware of the fact that prior to the mid-1970's and the introduction of New Jersey laws and regulations regarding No Fault Reform, premium rate levels, nonrenewal laws and regulations, compulsory automobile and motor vehicle insurance and the sharp increase in the numbers of insureds in the New Jersey Automobile Insurance Plan, that companies writing automobile insurance in New Jersey generally reported positive net income on their automobile insurance lines.

ROBERT J. SCHRAEDER

Sworn and subscribed to
before me this 7th day
of November, 1980

GEORGE G. HILL
Notary Public of New Jersey
My Commission Expires September 24, 1983

Appendix A to Schraeder Affidavit

Introduction

In this volume we present comprehensive reports upon the financial position, history and transactions of over seventeen hundred insurance companies and branch offices of foreign companies operating in the United States and Canada, writing fire, marine, casualty, accident and health, surety and allied classes of business. On companies licensed to do business in the United States, we present Best's Policyholders' Ratings or Best's General Ratings indicating our opinion of the comparative position of each company or association, measured by industry averages. We believe that this volume, together with our complete, carefully edited monthly magazine (*Best's Review, Property-Casualty Insurance Edition*), *Best's Insurance Management Reports*, and our special reporting service, places at the disposal of all interested—in or out of the insurance business—the most up-to-date, complete, reliable and valuable information about underwriting companies or organizations.

The reports presented herein upon the respective stock, mutual, Lloyds and reciprocal insurance institutions are based upon their sworn annual statements, required to be filed with the various states, and in many instances supplementary data, accurate analysis of which requires special knowledge and experience.

The separate report on each institution listed in this volume includes a review of History—Management—General Underwriting Policy—Investment Policy—and a variety of statistical exhibits: Underwriting by Classes—Classification of Admitted Assets—Comparative Financial, Underwriting and Investment figures and Distribution by States

of Premium Income. Also presented are comparative statistics covering assets and liabilities, the distribution of premiums and losses, direct and net, under different types of risks, as well as a wide variety of other important data.

There is also supplied for quick reference 1: a list of all mutual insurance companies, large and small, whose titles and addresses we have been able to secure (approximately 2,000 in number) grouped by states of incorporation, showing (a) the year began business, (b) total assets, (c) premiums and/or assessments received, (d) net losses paid; 2: general history and comparative financial and operating statistics of companies transacting property and casualty insurance in Canada; 3: general review, plan of operation and financial statements of all State Workers Compensation Insurance Funds in the United States; 4: listing of Underwriting Organizations and Combination Policies; 5: listing of companies and associations which have retired in the last ten years.

Best's Policyholders' Ratings—Best's General Ratings

In very few other forms of busines activity is financial responsibility more vital than in the insurance business. It follows that the utmost care must be exercised in the selection of insurance carriers.

Best's Policyholders' Ratings or Best's General Ratings are based upon analysis which give consideration to each of a number of factors of varying importance which in the operation of an insurance institution result in permanence and safety for its policy or bond holders, or the reverse. The adequacy of the net safety factor (capital and surplus in a stock company and surplus in a mutual or reciprocal institution, assets taken at market values and credit allowed

for equities, if any, in reserves), the adequacy of the reserves set up to provide for the ultimate payment of undischarged liabilities; the profit or loss from underwriting, the economy of operation and skill in selection of risks assumed, reflected by the ratios of expenses and losses to premiums; the size and spread of underwriting commitments, gross and net; the soundness, liquidity, diversification and yield of assets, with adequate attention to the relation of real estate or large single investments, if any, to total resources; the general trend of the business and other factors, are all weighed in arriving at the final Best's Policyholders' Rating or Best's General Rating.

So much interest in Best's Policyholders' Rating or Best's General Rating systems has been manifested by our clients —including mercantile and manufacturing concerns, public utility companies and others purchasing large amounts of insurance, banks and trust companies, insurance agents, brokers and insurance companies—that an explanation of some of the factors used is presented in a review which appears in the "Preface" of this publication.

Historial Development of This Volume

Our first volume, published in 1900, contained three hundred pages as compared with the present two thousand-page book. The six-fold growth is due to an increase in the number of insurance organizations in active operation and to the enlargement of the scope of each report. When the first volume was issued the casualty-surety business was in its infancy. Until 1914 a single volume of reports covered all the classes of carriers above mentioned. In that year, however, because many subscribers were interested only in either fire and marine lines or casualty or surety lines, we divided the book into two separate volumes.

Appendix A to Schraeder Affidavit

Multiple line underwriting operations are now widespread. One company, if financially strong enough, is permitted in all States to write all the enumerated classes of business, in contrast to earlier years, when fire and marine companies were prohibited from writing casualty and surety business, and vice versa. This change necessitated consolidating the two volumes in one over-all publication in 1952. The current volume may, therefore, properly be considered the eighty-first consecutive annual edition.

We have spared no effort to serve those who need full information and shall appreciate suggestions looking toward further improvement, in even the smallest detail.

We extend to our subscribers our thanks for their support.

A. M. BEST COMPANY, INC.
Oldwick, New Jersey, May 1980

Appendix B to Schraeder Affidavit

(Opposite) ☛

BEST'S INSURANCE MANAGEMENT REPORTS

Property/Casualty
Release No. 9
August 4, 1980

A.M. Best Company
Oldwick, N.J. 08858
201-439-2200

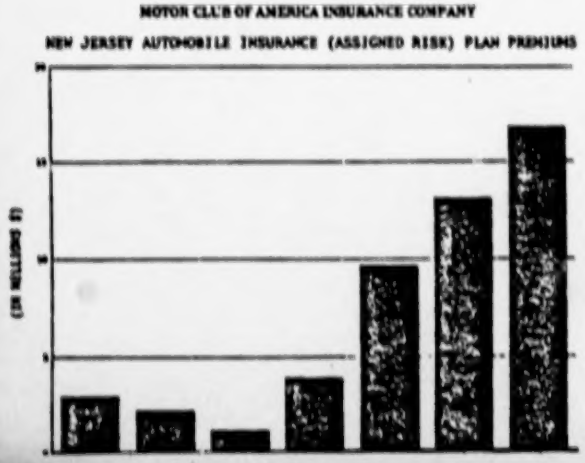
Financial News | Washington Review | Statistical Studies | Perspectives

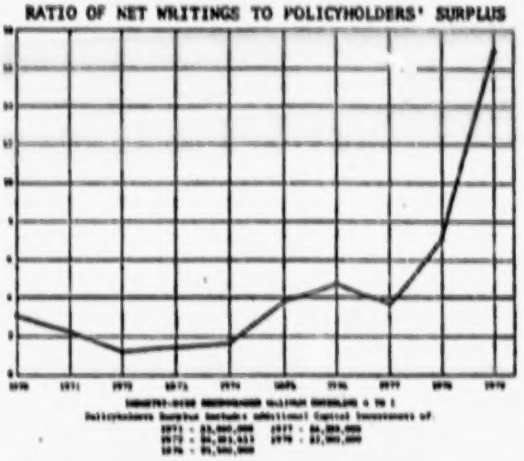
Preliminary "Special Report" on New Jersey Auto Insurer Is Due Next Week

Next week, Kramer Capital Consultants is scheduled to present its preliminary report on the condition of Motor Club of America Insurance Company to New Jersey insurance commissioner James J. Sheeran. The report, which will describe the findings of a "special audit," is being conducted at the request of the commissioner but at the expense of the insurer and is supposed to determine how much "extraordinary relief" the commissioner should grant MCA. The company is requesting an auto insurance rate increase of 31.7%, permission to non-renew its assigned risk customers, a continuation of its moratorium on acceptance of new assigned risks, and permission to refuse to renew certain of its voluntary business. This special review by Kramer was ordered by the commissioner despite the presence of department examiners at MCA since October 1979.

A special audit isn't needed to show that the situation at MCA is serious. The company offers a microcosmic look at the auto insurance situation in New Jersey as it has unfolded under the administration of Mr. Sheeran. MCA's plight is worse than that of other companies only because its business is about 80% in New Jersey's auto insurance market. Lacking sufficient geographic and coverage spread, it has no cushion with which to withstand the crushing combination of a bad no-fault law and a regulatory philosophy that espouses consumerism above all.

Despite the pullout of a number of companies from New Jersey and the glaring need for an adequate rate and reform of





the no-fault law, Commissioner Sheeran has evinced little concern for the plight of the automobile insurers in his jurisdiction. The rationale appears to be that underwriting profits from other lines and other states can carry the New Jersey burden. Legislative, regulatory and pricing constraints are such that virtually no new voluntary auto policies are written in the New Jersey market. New drivers, with rare and ever-decreasing exception, go directly into the New Jersey Automobile Insurance Plan, so that, at this point, some 40% of the insured drivers in the state are assigned risks.

The state has a compulsory no-fault law that has been termed the worst in the country – it contains an extremely low ($200) tort threshold coupled with an unlimited medical provision, so that suits abound and catastrophic losses have become considerably more numerous. At the same time, thanks to recent legislation, assigned risk policies provide liability coverage up to a $100,000/$300,000 limit, an amount that assures assigned losses will be "too big to eat." Overseeing this conglomeration of laws and rules that almost seem designed to produce an underwriting loss is an insurance commissioner who has steadfastly refused to approve rates commensurate with the coverages provided. In the case of the Motor Club, with auto insurance as the primary business and with 40% of that business coming in as assigned risks, the consequences have been disastrous.

Since 1971 the management of MCA Insurance Co. has found it necessary and has been a[illegible] to add nearly $18 million

to the company's capital and surplus; but all of that money, plus investment gains, plus income tax recoveries arising out of underwriting losses, has been lost in the auto market – and on top of that, policyholders' surplus has been drained during the period from just under $7 million at the start of 1971 to $3.2 million at the close of 1979.

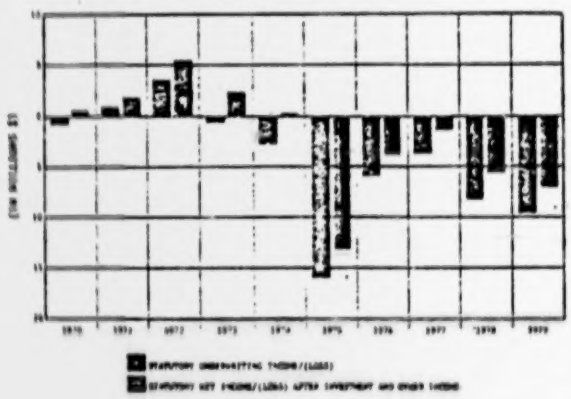
MCA's current premiums written-to-surplus ratio is 17 to1, a figure that would boggle most minds – but not that of Mr. Sheeran, who when told by MCA that Connecticut was about to order the company to withdraw from that state because writings to surplus were so far out of line, responded that such ratios "don't mean a damn thing to me." MCA solved its Connecticut difficulty by putting up an escrow account and it is running off that business.

Considering the circumstances prevailing in New Jersey, infusion of more money into MCA Insurance would be a highly questionable, if not reckless, action. In the absence of rate or underwriting concessions, a buy-out of the holding company's auto club and other assets and discontinuance and run-off of the insurance operation seem to be the only ways to avoid a major insurance company insolvency.

Commissioner Sheeran was quoted in a Newark newspaper as admitting that MCA's failure "would have a material impact on my ability to maintain orderly markets in the automobile insurance lines." He has proclaimed the special audit by Kramer to be a "rescue mission" for MCA. Unlike GEICO,

MOTOR CLUB OF AMERICA INSURANCE COMPANY

RESULTS OF OPERATIONS



Nationwide, SAFECO and others that have done so, MCA has no option to withdraw from the state.

It is difficult to see how the interests of the public, the industry or the State of New Jersey could be served if MCA is put into rehabilitation. While the loss of the company could prompt rate and regulatory reform, it would be at the expense of throwing more than 100,000 drivers onto a contracting market and raising questions about the adequacy of state insurance regulation.

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A. M. Best Company, Inc., Oldwick, New Jersey 08858

Appendix C to Schraeder Affidavit

1979 Auto Insurance Experience

of the

15 Leading New Jersey Insurers

Company/Group	Private Passenger Auto Direct Premiums Earned	Private Passenger Auto Combined Ratio*
Allstate	$265,788,000	111.8%
State Farm	121,313,000	102.8
New Jersey Manufacturers	102,533,000	114.6
Liberty Mutual	69,162,000	121.3
Selected Risks	44,578,000	117.8
Prudential	44,116,000	121.6
Travelers	41,650,000	105.8
Aetna Life & Casualty	40,920,000	126.8
Motor Club of America	40,815,000	120.8
Continental	34,159,000	115.4
INA	32,025,000	125.0
Fireman's Fund	27,072,000	136.9
General Accident	26,780,000	121.1
Ohio Casualty	25,857,000	104.2
Royal Insurance	25,305,000	119.0

Source: A.M. Best Company, Inc., Oldwick, New Jersey
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* Combined ratio is the sum of the ratio of losses incurred to premiums earned and the ratio of commissions and expenses incurred to premiums written. Anything over 100.0% represents a loss.

Statutory Material, Regulations, and Court Rules

New Jersey Statutes

N.J.S.A. 2A:14-1

2A:14-1. *6 years*

Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.

This section shall not apply to any action for breach of any contract for sale governed by section 12A:2-725 of the New Jersey Statutes.

N.J.S.A. 17:29A-1(f)

(f) "Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of rate-making for two or more insurers.

N.J.S.A. 17:29A-2

17:29A-2. *License required; application; fee*

No rating organization shall do business in this State until it shall have been licensed to do so by the commissioner. Application for such license shall be made on such forms as the commissioner shall prepare for that purpose. Upon applying for such license, every rating organization shall file with the commissioner (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its by-laws or rules governing the conduct of its business, or such of the foregoing, if any, as such rating organization may have; (2) a list of insurers who are or who have agreed to become members of or subscribers to such rating organization; (3) the name and address of a person or persons in this State upon whom notices, or orders of the commissioner affecting such rating organization may be served; and (4) such other information as the commissioner may require. If the commissioner finds that the applicant for license (a) has complied with the provisions of this act; (b) is equipped with an adequate staff of experts and clerks qualified in rate-making; and (c) is otherwise qualified to function as a rating organization, he shall issue a license to such rating organization authorizing it to engage in rate-making for the kinds of insurance specified in such license. If the commissioner shall determine that the applicant is not entitled to a license, he shall make an order denying its application, specifying his reasons for such denial. Licenses issued pursuant to this section shall remain in effect until suspended in the manner provided by this act. Every rating organization doing

business in this State on the effective date of this act, may continue to transact such business thereafter, subject to the provisions of this act, pending its application to the commissioner, to be made within thirty days after the effective date of this act, for a license to do business as required by this section. A fee of twenty-five dollars ($25.00) shall be paid for each license issued under this section.

N.J.S.A. 17:29A-3

17:29A-3. *Insurers may be members of rating organizations*

Every rating organization shall make reasonable provision in its bylaws, rules, constitution, or otherwise, to permit any insurer engaged in the kind of insurance for which rate-making is done by such rating organization, to become a member thereof, or a subscriber for any kind of insurance or subdivision of a kind of insurance found by the commissioner to be a proper basis for service by the rating organization upon application therefor by such insurer. No insurer shall be a member of or a subscriber to more than one rating organization for the purpose of making rates for the same kind or for the same subdivision of a kind of insurance. No rating organization shall discriminate unfairly between insurers in the condition imposed for admission as subscribers, or in the services rendered to either members or subscribers. The refusal of any rating organization to admit an insurer as a subscriber shall, at the request of such insurer, be reviewed by the commissioner at a hearing held upon at least 10 days' notice to such rating organization and such insurer. If the commissioner shall

find that the insurer has been refused admittance to such rating organization as a subscriber without justification, he shall make an order directing such rating organization to admit such insurer as a subscriber. If he shall find that the action of the rating organization in refusing admittance to an insurer as a subscriber is justified, he shall make an order affirming its action.

N.J.S.A. 17:29A-6

17:29A-6. *Rating system to be filed*

Beginning with the sixtieth day after this act takes effect, every insurer shall, before using or applying any rate to any kind of insurance, file with the commissioner a copy of the rating-system upon which such rate is based, or by which such rate is fixed or determined. The filing herein required may, on written notice by an insurer to the commissioner, be made on behalf of such insurer, by a rating organization of which such insurer is a member or subscriber. The provisions of this section shall be deemed to have been complied with by any insurer which had, before the effective date of this act, directly or by a rating organization of which it is a member or subscriber, or by a designated agent or expert, filed with the commissioner a rating-system substantially in the form required by this section to be filed. From and after the date of the filing of such rating-systems, every insurer shall charge and receive rates fixed or determined in strict conformity therewith, except as in this act otherwise expressly provided.

N.J.S.A. 17:29A-7

17:29A-7. *Rating system, approval of; revision or modification*

If, after examination thereof, the commissioner shall find that such rating-systems filed by or on behalf of an insurer provide for, result in, or produce rates that are unreasonably high or excessive, or are not adequate for the safeness and soundness of the insurer, or are unfairly discriminatory between risks in this State involving essentially the same hazards and expense elements, he shall issue an order to such insurer, or to the rating organization of which such insurer is a member or subscriber, directing that such rating-systems be altered in the manner and to the extent stated in such order, to produce rates that are reasonable and adequate, and not unfairly discriminatory. If the commissioner shall find that such rating-systems provide for, result in, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this State involving essentially the same hazards and expense elements, he shall approve such rates, and such approval shall continue in effect until the commissioner shall, by order, direct that such rating-systems be changed or modified, as in this section provided. If the commissioner shall fail to approve or disapprove any rating-systems within ninety days from the filing thereof such rating-systems shall be deemed to be approved by him. Whenever the commissioner shall find that rating-systems theretofore approved by him provide for, result in, or produce rates which are unreasonable, or inadequate, or which discriminate unfairly between risks in this State involving essentially the same hazards

and expense elements, he shall issue an order to all insurers employing such rating-systems, or to the rating organizations of which such insurers are members or subscribers, directing that such rating-systems be altered or revised in the manner and to the extent stated in such order to provide for, result in, or produce rates which are reasonable, adequate, and do not discriminate unfairly between risks in this State involving essentially the same hazards and expense elements. Rating-systems filed with the commissioner on or before the effective date of this act pursuant to the provisions of this section, shall be deemed to have been approved by the commissioner, such approval to continue in effect until the commissioner shall, by order, direct that such rating-system be altered or modified as in this section provided.

N.J.S.A. 17:29A-14

17:29A-14. *Alteration of rating systems; copies to be filed; approval of commissioner*

A rating organization, or any insurer making its own rates, may, from time to time, alter, supplement, or amend its rating systems, or any part thereof, by filing with the commissioner copies of such alterations, supplements, or amendments together with a statement of the reason or reasons for such alteration, supplement, or amendment. If such alteration, supplement or amendment shall have the effect of increasing or decreasing rates, the commissioner shall determine whether the rates as altered thereby are reasonable, adequate, and not unfairly discriminatory. If the commissioner shall determine that the rates as so altered are not unreasonably high, or inadequate, or unfairly discriminatory, he shall make an order approving

them. If he shall find that the rates as altered are unreasonable, inadequate, or unfairly discriminatory, he shall issue an order disapproving such alteration, supplement or amendment.

N.J.S.A. 17:29A-24

17:29A-24. *Review; stay*

Any order made by the commissioner pursuant to the provisions of this act shall be subject to review by the Superior Court in a proceeding in lieu of prerogative writ. Upon the institution of the proceeding, the court may, in the following cases, stay the provisions of such order:

(a) Where, pursuant to section two of this act, a rating organization, which was engaged in the business of rate-making on the effective date of this act, has been refused a license by the commissioner. Such rating organization may, with leave of court, be allowed to continue to engage in business, subject to the provisions of this act, pending final disposition of its application for review; or

(b) Where any order of the commissioner shall provide for a change in any rating-system which results in an increase or decrease in rates, any insurer affected thereby may, with leave of court, pending final disposition of the proceedings in the Superior Court, continue to charge rates which obtained prior to such order, on condition that the difference in the rates be deposited in a special account by the insurer affected, to be held in trust by such insurer, and to be retained by the insurer or paid to the holders of policies issued after the order of the commissioner, as the court may determine.

N.J.S.A. 17:29D-1

17:29D-1. *Rules and regulations*

The Commissioner of Insurance may adopt, issue and promulgate rules and regulations establishing a plan for the providing and apportionment of insurance coverage for applicants therefor who are in good faith entitled to, but are unable to procure the same, through ordinary methods. Every insurer admitted to transact and transacting any line, or lines, of insurance in the State of New Jersey shall participate in such plan and provide insurance coverage to the extent required in such rules and regulations.

Prior to the adoption or amendment of such rules and regulations, the commissioner shall consult with such members of the insurance industry as he deems appropriate. Such consultation shall be in addition to any otherwise required public hearing or notice with regard to the adoption or amendment of rules and regulations.

N.J.S.A. 17:30-8

17:30-8. *Procedure*

When in the judgment of the board of directors of an insurance corporation of this state, it is deemed advisable and most for the benefit of the company that it be dissolved, the board, by a majority vote of all its members at a meeting called for that purpose, of which meeting each director shall have received at least three days' notice, shall pass a resolution to that effect and call a meeting of the stockholders to take action thereon. Within ten days after the adoption of the resolution, notice of its adoption and of the calling of the meeting to take action there-

on, shall be mailed to each stockholder, or, if a mutual company, to each member residing in the United States, and a like notice shall be published in a newspaper published in the county wherein the company has its principal office, beginning within such ten days and continuing for at least four weeks successively, once a week, next preceding the time appointed for the meeting. The meeting shall be held at the company's office between the hours of ten o'clock in the forenoon and three o'clock in the afternoon on the day so named, and may, by consent of a majority in interest of the stockholders or members present, be adjourned from time to time, for not less than eight days at any one time. Notice of an adjourned meeting shall be given by advertisement in such newspaper.

If at the meeting, two-thirds in interest of all the stockholders, or, if a mutual company, two-thirds of the members, consent that a dissolution take place and signify their consent in writing, the consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the department. Thereupon the commissioner, if satisfied by proof, submitted to and verified by him, that the requirements aforesaid have been complied with, shall issue a certificate that the consent has been filed. The board of directors shall cause the certificate to be published, four weeks successively, at least once a week, in a newspaper published in the county. Upon filing in the department an affidavit that the certificate has been so published, the company shall be dissolved and the board shall proceed to settle up and adjust its business and affairs. It may sell, exchange or invest in bonds of the home owners' loan corporation or other agencies of the federal government, for cash, securities or other instruments held by them as such trustees.

When all the stockholders or members consent, in writing, to a dissolution, no meeting or notice thereof shall be necessary, but on filing the consent in the department, the commissioner shall forthwith issue a certificate of dissolution, which shall be published as above provided.

No disbursement of the assets or funds of the company shall be made to the stockholders until all proceedings in the voluntary dissolution have been first approved by the commissioner.

Laws of 1975, Ch. 113, §31

Repealer.

31. Repealer. Chapter 30 of Title 17 of the Revised Statutes is repealed but such repeal shall not affect pending proceedings under such sections.

N.J.S.A. 17:30C-1 through 17:30C-31

17:30C-1. *Definitions*

a. "Impairment or insolvency" means the capital of a stock insurer or the surplus of a mutual insurer, shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock of a stock insurer, or the minimum surplus if a mutual insurer required by this title to be maintained for the kind or kinds of insurance it is then authorized to transact.

b. "Insurer" shall include a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the commissioner

or the equivalent insurance supervisory official of another state; also all persons purporting to be engaged as insurer in this State, and persons in process of organization to become insurers, pursuant to the provisions of Title 17 of the Revised Statutes.

c. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this act for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

d. "Domiciliary state" means the state in which an insurer has its domicile, or in the case of an alien insurer the State in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

e. "Ancillary state" means any state other than a domiciliary state.

f. "Reciprocal state" means any state other than this State in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in section 23 of this act are in force, including the provisions requiring that the commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

g. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term in-

cludes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

h. "Preferred claim" means any claim with respect to which the law of the State or of the United States accords priority of payment from the general assets of the insurer.

i. "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

j. "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than 4 months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

k. "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

17:30C-2. *Jurisdiction of delinquency proceedings*

The Superior Court shall have original jurisdiction of delinquency proceedings under this act.

17:30C-3. *Exclusive remedy—appeal*

Delinquency proceedings pursuant to this act shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings, or any other similar procedure, unless the same has been instituted by the commissioner.

17:30C-4. *Commencement of delinquency proceeding*

a. The commissioner shall commence any such proceeding by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

b. The application shall be by verified petition, setting forth the ground or grounds for the proceeding and the relief demanded.

c. If the court is satisfied from reading the commissioner's petition that the facts therein alleged, if established, would constitute grounds for a delinquency proceeding under this act, it shall issue an order to show cause as referred to in a. above.

d. On the return of the order to show cause, the court shall either deny the application or grant the application together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers or the public may require.

17:30C-5. *Injunction*

a. Upon application by the commissioner for such an order to show cause, or at any time thereafter, the court may, without notice, issue an injunction restraining the insurer, its officers, directors, stockholders, policyholders, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

b. The court may, at any time during a proceeding under this act, issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

17:30C-6. *Grounds for rehabilitation—domestic insurers*

The commissioner may apply to the court for an order directing him to rehabilitate a domestic insurer upon one or more of the following grounds: That the insurer

a. Is impaired or insolvent; or

b. Has refused to submit its books, records, accounts or affairs to the reasonable examination of the commissioner; or

c. Has concealed or removed records or assets in violation of regulations which the commissioner may adopt; or

d. Has failed to comply with the commissioner's order, made pursuant to law, to make good an impairment of capital (if a stock insurer) or an impairment of surplus (if a mutual insurer) within the time prescribed by law; or

e. Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without first having obtained the written approval of the commissioner; or

f. Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public; or

g. Has willfully violated its charter or any law of this State; or

h. Has an officer, director, or manager who has unlawfully refused to be examined under oath, concerning its affairs; or

i. Has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the commissioner has found, after notice to and hearing of such insurance company and of such officer or director, to be a dishonest or untrustworthy person; or

j. Has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or of its property, otherwise than pursuant to the provisions of this act but only if such appointment has been made or is imminent; or

k. Has consented to such an order through a majority of its directors, stockholders, or policyholders; or

l. Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within 30 days after the judgment became final or within 30 days after time for taking an

appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

17:30C-7. *Nature of rehabilitation order—termination of rehabilitation—domestic insurers*

a. An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

b. If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

c. The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business.

17:30C-8. *Grounds for liquidation*

The commissioner may apply to the court for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this State, regardless of whether or not there has been prior order directing him to rehabilitate such insurer, upon any of the grounds specified in section 6,[1] or upon any one or more of the following grounds: That the insurer

a. Has ceased transacting business for a period of 1 year; or

b. Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any laws except this act; or

c. Has not organized or completed its organization and obtained a certificate of authority as an insurer.

17:30C-9. *Order of liquidation—domestic insurers*

a. An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct and to give notice to all creditors who may have claims against the insurer to present such claims.

b. The commissioner may apply under this act for an order dissolving the corporate existence of a domestic insurer:

(1) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(2) Upon the grounds specified in section 8 c., regardless of whether an order of liquidation is sought or has been obtained.

17:30C-10. *Order of liquidation—alien insurers*

An order to liquidate the business of a United States branch of an alien insurer having trusteed assets in this State shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

17:30C-11. *Grounds for conservation—foreign insurers*

The commissioner may apply for an order directing him to conserve the assets within this State of a foreign insurer upon any one or more of the following grounds:

a. Upon any of the grounds specified in section 6,[1] and in section 8b.[2]

b. That its property has been sequestrated in its domiciliary sovereignty or in any other sovereignty.

17:30C-12. *Grounds for conservation—alien insurers*

The commissioner may apply for an order directing him to conserve the assets within this State of an alien insurer upon any one or more of the following grounds:

a. Upon any of the grounds specified in section 6 [1] and in section 8b.[2]

b. Upon the ground that the insurer has failed to comply within the time designated by the commissioner, with an order made by him to make good an impairment of its trusteed funds, or

c. Upon the ground that the property of the insurer has been sequestrated in its domiciliary sovereignty or elsewhere.

17:30C-13. *Conservation or ancillary receivership—foreign insurers*

a. An order to conserve the assets of a foreign insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this State and to conserve it, subject to the further direction of the court.

b. Whenever a domiciliary receiver is appointed for any such insurer in its domiciliary state the court shall, on application of the commissioner, appoint the commissioner as the ancillary receiver in this State.

c. An order to liquidate the assets in this State of a foreign insurer shall require the commissioner forthwith to take possession of the property of the insurer within this State and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this act.

17:30C-14. *Conservation or ancillary receivership—alien insurers*

An order to conserve the assets of an alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this State and to conserve it subject to the further direction of the court.

17:30C-15. *Conduct of delinquency proceedings—domestic insurers*

a. Whenever under the laws of this State a receiver is to be appointed in delinquency proceedings for a domestic insurer, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

b. As domiciliary receiver, the commissioner shall be vested by operation of law, with the title to all property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer and he shall have the right to recover the same and reduce the same to his possession.

c. The filing or recording of the order, directing possesion to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of the title duly filed or recorded.

d. The commissioner, as domiciliary receiver, shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies, if deemed desirable for the protection of the assets.

e. Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by

the laws of this State for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

17:30C-16. *Conduct of delinquency proceedings—foreign and alien insurers*

a. Whenever under this act an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this State, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in section 13 b. of this act:

(1) If he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver; or

(2) If 10 or more persons resident in this State having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

b. The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this State, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this State. He shall also be entitled to recover the other assets of the insurer located in this State, except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right

to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this State.

c. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he may be entitled under the laws of this State.

17:30C-17. *Deputies and assistants*

In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants, and all expenses of taking possession of the insurer and of conducting the proceedings, shall be fixed by the receiver subject to the approval of the court, and shall be paid out of funds or assets of the insurer. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

17:30C-18. *Claims of nonresidents against domestic insurers*

a. In a delinquency proceeding begun in this State against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in domiciliary delinquency proceedings.

b. Controverted claims belonging to claimants residing in reciprocal states may either:

(1) Be proved in this State, or

(2) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State, as provided in section 19 of this act with respect to ancillary proceedings in this State, the final allowance of such claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

17:30C-19. *Claims against foreign insurers*

a. In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this State may file claims either with the ancillary receiver, if any, appointed in this State, or with the domiciliary receiver. All such

claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings:

b. Controverted claims belonging to claimants residing in this State may either:

(1) Be proved in the domiciliary state as provided by the law of that state; or

(2) If ancillary proceedings have been commenced in this State, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this State, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this State involving adjudication of the claim. The final allowance of the claim by the courts of this State shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority if any, against special deposits or other security located within this State.

17:30C-20. *Form of claim—notice—hearing*

a. All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

b. All claims filed in this State shall be filed with the receiver, whether domiciliary or ancillary, in this State, on or before the last date for filing as specified in this act.

c. Within 10 days of the receipt of any claim, or within such further period as the court may fix, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

d. At the hearing all persons interested shall be entitled to appear and the court shall enter an order allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

17:30C-21. *Priority of certain claims*

a. In a delinquency proceeding against an insurer domiciled in this State, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this State. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

b. In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this State shall be preferred claims if like claims are preferred by the laws of that state.

c. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from a special deposit.

d. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general credit, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured cred-

itors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this act, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

17:30C-22. *Attachment and garnishment of assets*

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within 4 months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

17:30C-23. *Uniform insurers liquidation act*

a. Subsections b. through k. of section 1, subsections a. and c. of section 4, together with sections 5 and 15 through 23 constitute and may be referred to as the Unifrom Insurers Liquidation Act.

b. The Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions when applicable conflict with other provisions of this act, the provisions of such act shall control.

17:30C-24. *Borrowing on pledge of assets*

For the purpose of facilitating the rehabilitation, liquidations, conservation or dissolution of an insurer pursuant to this act, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor, and secure the payment of the same by the mortgage, pledge, assignment, transfer in trust or hypothecation of any or all of the property of such insurer, whether real, personal or mixed, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner to repay any loan made pursuant to this act.

17:30C-25. *Voidable transfers*

a. Any transfer of, or lien upon, the property of an insurer which is made or created within 4 months prior to the granting of an order to show cause under this act with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

b. Every director, officer, employee, stockholder, policyholder, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

c. The commissioner, as receiver in any proceeding under this act, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder or policyholder of such insurer might have avoided, and may recover the property so transferred, or its value from the person to whom it was transferred, unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this act. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as above specified.

17:30C-26. *Priority of claims for compensation*

a. Compensation actually owing to employees other than officers of an insurer, for services rendered within 3 months prior to the commencement of a proceeding against the insurer under this act, but not exceeding $1,000.00 for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner, may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will, in his opinion, be sufficient for the expenses of administration.

b. Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees.

c. The priorities of distribution in a liquidation proceeding shall be in the following order:

(1) Expenses of administration;

(2) Compensation of employees as provided in subsection (a) of this section;

(3) Claims for taxes and debts due to Federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;

(4) Claims by policyholders, beneficiaries and insurers arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and liability claims against insurers which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and claims presented by the New Jersey Property-Liability Insurance Guaranty Association and claims presented by any similar organization in another state.

(5) All other claims.

17:30C-27. *Offsets*

a. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this act, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection b. below.

b. No offset shall be allowed in favor of any such person where

(1) The obligation of the insurer to such person would not at the date of the entry of any liquidation order, or at such other date determined by the court for fixing the rights and liabilities with respect to the estate of the insurer, have entitled him to share as a claimant in the assets of the insurer; or

(2) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset; or

(3) The obligation of such person is to pay a balance upon a subscription to the capital stock of a stock insurer.

17:30C-28. *Allowance of certain claims*

a. No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to section 30 a., except that such claims shall be considered, if properly presented, and may be allowed to share where

(1) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer; or

(2) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

b. Where an insurer has been so adjudicated to be insolvent, any person who has a cause of action against an insured of such insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed

(1) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(2) If such person shall furnish suitable proof, unless the court, for good cause shown, shall otherwise direct, that no further valid claims against such insurer arising out of

his cause of action, other than those already presented, can be made; and

(3) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be, were it not in liquidation.

c. No judgment against such an insured, taken after the date of the entry of the liquidated order, shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order, shall be considered as conclusive evidence in the liquidation proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damage to which such person is therein entitled.

17:30C-29. *Allowance of secured claims*

No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation, or such other date set by the court for fixation of rights and liabilities, unless the claimant shall surrender his security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

17:30C-30. *Time to file the claims*

a. If upon the granting of an order of liquidation under this act, or at any time thereafter during the liquidation

proceeding, the insurer shall not be clearly solvent, the court shall, after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and who have not filed proper proofs thereof, to present the same to him, at a place specified in such notice, within 4 months from the date of the entry of such order, of, if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claims shall be specified in the notice. Such notice shall be given in a manner determined by the court.

b. Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full, with interest.

17:30C-31. *Proposal for disbursement of assets of insolvent companies; application for approval; notice of application*

a. Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction of this State, the commissioner shall make application to the court for approval of a proposal to disburse assets out of such company's marshaled assets, from time to time as such assets become available, to the New Jersey Property-Liability Insurance Guaranty Association and to any similar organization in another state having substantially the same provision of law.

b. Such proposals shall at least include provision for:

(1) Reserving amounts for the payment of the expenses of administration and the claims falling within priorities established in section 26 of the act to which this act is amendatory.

(2) Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available.

(3) Equitable allocation of disbursements to the New Jersey Property-Liability Guaranty Association and similar associations established in other states which are entitled thereto; and

(4) The securing by the receiver from each of such associations entitled to disbursements pursuant to this section of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section 26 of P.L.1975, c. 113 (C. 17:30C-26), in accordance with such priorities. No bonds shall be required of any such association.

c. The receiver's proposal shall provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which such association could assert claims against the receiver and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amounts of such payments made or to be made by the associations then disbursements shall be in the amount of available assets.

d. Notice of intention to apply for approval of a disbursement of assets shall be given to the associations in and

to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage fee paid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the receiver's proposal complies with subsection (b)(1) and (b)(4) of this section.

N.J.S.A. 17:32-13

17:32-13. *Surrender of certificate of authority; return of securities*

An insurance company of another state or foreign country authorized to transact the business of insuring against loss or damage on account of neglect or breaches of duty or obligations guaranteed by the insurer, may at any time surrender to the commissioner its certificate of authority and thereafter cease to engage in the business. The company shall thereupon be entitled to the release and return of its securities so deposited, in manner following:

The company shall file with the commissioner a statement in writing, under oath, giving the date, name and amount of all its then existing obligations of suretyship or indemnity in this state, setting out the facts of each case. The commissioner after an examination of the facts, shall require the company to file with the comptroller a bond to the state, in the penalty of not less than twenty thousand nor more than fifty thousand dollars, executed by the company and two or more responsible freeholders of this state, or a company of this

state, duly authorized to transact such business, conditioned for the prompt fulfillment by the company of all its said outstanding obligations of suretyship and indemnity, and stipulating that the makers of the bond may be joined as defendants in any action upon any of the said obligations of suretyship or indemnity of the company, and that if judgment in the action is rendered against the company it may at the same time be rendered and enforced against the makers of the bond, without further or other action against them. The bond shall stand for the security and benefit of all persons interested in the outstanding obligations of suretyship and indemnity. Upon approving and filing the bond the comptroller shall deliver the securities to the company.

N.J.S.A. 39:6A-3

39:6A-3. *Compulsory automobile insurance coverage; limits*

Every owner or registered owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile wherein such coverage shall be at least in:

a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

c. an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act without the consent of the Commissioner of Insurance.

N.J.S.A. 39:6A-4

39:6A-4. *Personal injury protection coverage, regardless of fault*

Every automobile liability insurance policy insuring an automobile as defined in this act against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of an automobile shall provide additional coverage, as defined herein below, under provisions approved by the Commissioner of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident involving an automobile, to other persons sustaining bodily injury while occupying the automobile of the named insured or while using such automobile with the permission of the named insured and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile. "Additional coverage" means and includes:

a. Medical expense benefits. Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payment shall be made to the estate of the decedent. In

the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000.00 on account of personal injury to any one person in any one accident, such excess shall be paid by the insurer in consultation with the Unsatisfied Claim and Judgment Fund Board and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to section 2 of this act.

b. Income continuation benefits. The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of $100.00, per week. Such sum shall be payable during the life of the injured person and shall be subject to an amount or limit of $5,200.00, on account of injury to any one person, in any one accident.

c. Essential services benefits. The payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for himself, his family and the members of the family residing in the household, subject to an amount or limit of $12.00 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of $4,380.00, on account of injury to any one person in any one accident.

d. Survivor benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 4 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 4 b. shall be paid to the surviving spouse, or in the event there is no sur-

viving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under section 4 c. of this act, the maximum amount of benefits which could have been paid such person, under section 4 c., shall be paid to the person incurring the expense of providing such essential services.

e. Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of $1,000.00, on account of the death of any one person in any one account shall be payable to decedent's estate.

Benefits payable under this section shall not be assignable or subject to levy, execution, attachment or other process for satisfaction of debts.

N.J.S.A. 39:6A-8

39:6A-8. *Tort exemption; limitation on the right to damages*

Every owner, registrant, operator or occupant of an automobile to which section 4, personal injury protection coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages to any person who is required to maintain the coverage mandated by this act, or to any person who has a right to receive benefits under section 4 of this act as a result of bodily injury, arising out of the

ownership, operation, maintenance or use of such automobile in this State, if the bodily injury, is confined solely to the soft tissue of the body and the medical expenses incurred or to be incurred by such injured person or the equivalent value thereof for the reasonable and necessary treatment of such bodily injury, is less than $200.00, exclusive of hospital expenses, X-rays and other diagnostic medical expenses. There shall be no exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part, regardless of the right of any person to receive benefits under section 4 of this act. Bodily injury confined solely to the soft tissue, for the purpose of this section means, injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches, and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body.

N.J.S.A. 39:6A-10

39:6A-10. *Additional personal injury protection coverage*

Insurers shall make available to the named insured covered under section 4, and, at his option, to resident relatives in the household of the named insured, suitable additional first-party coverage for income continuation benefits, essential services benefits, death benefits and funeral expense benefits, but the income continuation and essential service benefits shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under section 4 and such

additional first party coverage shall be payable only to the extent that the claimant establishes that the amount of loss sustained exceeds the coverage specified in section 4. The additional coverage shall be offered by the insurer at least annually on a form prescribed by the Commissioner of Insurance, which shall be attached to or accompany all applications, initial policies and renewal policies or renewal notices. Income continuation in excess of that provided for in section 4 must be provided as an option by insurers for disabilities, as long as the disability persists, up to an income level of $35,000.00 per year, provided that a. the excess between $5,200.00 and the amount of coverage contracted for shall be written on the basis of 75% of said difference, and b. regardless of the duration of the disability, the benefits payable shall not exceed the total maximum amount of income continuation benefits contracted for. The Commissioner of Insurance is hereby authorized and empowered to establish, by rule or regulations, the amounts and terms of income continuation insurance to be provided pursuant to this section.

New Jersey Administrative Code

N.J.A.C. 11:3-1.13

11:3-1.13 *Three-year assignment period*

(a) A risk shall be assigned to a designated company for the period of three consecutive years. If a risk is unable to obtain insurance for itself at the end of the three-year period, reapplication for insurance may be made to the Plan.

(b) Such reapplication shall be considered as a new application.

(c) In the case of nonresident military personnel, as described under Section 1.3 (Residents and nonresidents) of this Chapter the designated company shall not be required to renew if at the time of renewal the insured is stationed in another state and his automobile is not registered in New Jersey.

N.J.A.C. 11:3-1.16

11:3-1.16 *Rates*

(a) Risks defined in Subchapters 2 through 5 of this Chapter shall be subject to the rules, rates, surcharges, minimum premiums and classifications approved for all companies subscribing to this Plan as filed on their behalf by the Automobile Insurance Plans Service Office.

1. Subchapter 2 (Supplement of Rules and Rates for Private Passenger Automobiles re Liability) and 4 (Supplement of Rules and Rates for Automobile Physical Damage Coverage) apply to risks that do not qualify for Supplement 2 of the aforementioned Subchapter.

2. Rates set forth in Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passenger Rates) of this Chapter shall apply to the following types of risks:

i. The risk was insured within the 90 days preceeding application to the Plan or at the time of application to the Plan still is insured with a company authorized to write automobile insurance in New Jersey, and such risk has been refused renewal or has received from the company notice of intent not to renew like coverage by the same com-

pany with the same policy form provisions, rules, rates and classifications of the manual under which the expiring policy was written except for revisions thereof approved by the Commissioner and at the same terms as applicable to the existing policy; provided, there has been no change in the risk's characteristics which result in a change in classification requiring the application of higher rates than would apply if this change had not occurred, and the applicant owner or anyone who usually operates the automobile has been free of accidents and/or moving traffic violations that would have made him subject to additional charges provided for in this Section, and has not been convicted of two or more moving traffic violations not specified in subsection (f) of this Section, or of a high misdemeanor or felony involving the use of an automobile within the 36 months preceding the date of application, or, in the case of a renewal policy, during the 36 months preceding the effective date of the renewal policy.

Note: A person insured under the consent to higher rate provision of the New Jersey statute (N.J.S.A. 17: 29A-7.1) shall qualify for the rates as set forth in Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passenger Rates) of this Chapter if he submits in lieu of a nonrenewal notice an offer from the carrier to renew coverage at rates higher than manual, or a request to complete a form consenting to such higher rates, provided he meets all other requirements for such qualification.

ii. The risk is currently insured by assignment through the Plan at the rates as set forth in Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passen-

ger Rates) of this Chapter or at the rates in effect prior to June 1, 1971 in Subchapters 2 through 5 of this Chapter if the current coverage had an effective date within 12 months preceding June 1, 1971, and such risk has been free of accidents and/or moving traffic violations that would have made it subject to additional charges provided for in this Section and has not been convicted of two or more traffic violations not specified in subsection (b) of this Section or high misdemeanor or felony involving the use of an automobile within the 36 months preceding the effective date of the renewal policy.

iii. A risk which previously qualified for Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passenger Rates) or risk which would have qualified under subparagraph i above at renewal, but which failed to renew its prior coverage, shall remain eligible for Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passenger Rates) on subsequent applications if such risk reapplies within 60 days of the effective date of cancellation or termination; provided, such risk has been free of accidents and/or moving traffic violations that would have made it subject to additional charges provided for in this Section, and has not been convicted of two or more traffic violations not specified in subsection (b) of this Section, or of a higher misdemeanor or felony involving the use of an automobile within the 36 months preceding the date of the new application. Such reapplication shall be assigned to the previous carrier.

Note: The date of conviction shall be determining in establishing the 36 month experience period of this subsection.

(b) All other risks placed through the Plan shall be subject to the rules, rates, minimum premiums and classifica-

tions in force, and to the rating plans applicable thereto, in use by the designated company, subject to the surcharges filed on behalf of the companies subscribing to this Plan by the Automobile Insurance Plans Service Office.

(c) For the purposes of such filings, each company subscribing to this Plan is a subscriber to the Automobile Insurance Plans Service Office and authorizes the Commissioner to accept such filings in its behalf.

(d) All of the statistical data required to develop the appropriate rates shall be furnished to the Automobile Insurance Plans Service Office by each company subscribing to this Plan, or by a statistical agency designated by such company.

(e) If a company is assigned a risk in a class for which it has no rates on file, the company shall file or promulgate a reasonable rate for such applicant or class subject to the provisions of the law of the State.

(f) For private passenger automobile risks, other than fleets, an additional charge shall be made on the basis of points accumulated during the 36 months immediately preceding the date of application for assignment, and in the case of renewal, during the 36th months immediately preceding the effective date of the renewal policy. Points shall be assigned for convictions and accidents involving the applicant as an owner or operator and for convictions and accidents involving anyone who usually operates the motor vehicle.

1. Six points shall be assigned for each of the following convictions:

i. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

ii. Failing to stop and report when involved in an accident;

iii. Homicide or assault arising out of the operation of a motor vehicle; or

iv. Operating a motor vehicle without an operator's or chauffeur's license or registration or during a period of revocation or suspension thereof.

2. Four points shall be assigned for:

i. The accumulation of points under a State point system or a series of convictions as a result of which the filing of evidence of financial responsibility under any financial responsibility law is required as of the effective date of the policy; or

ii. Any moving traffic violation as a result of which an operator's license was suspended or revoked; or a filing of evidence of financial responsibility under any financial responsibility law is required as of the effective date of the policy.

3. Three points shall be assigned for each of the following convictions:

i. Permitting an unlicensed person to drive;

ii. Loaning an operator's or chauffeur's license to an unlicensed operator; or

iii. Any moving traffic violations not otherwise specified which result in the accumulation of six or more points as defined in the New Jersey Motor Vehicle Law.

4. Two points shall be assigned for each of the following convictions:

i. Obtaining a license or registration through deception of any kind; or

ii Driving a motor vehicle in a reckless manner.

Note: For the purposes of paragraphs 1-4 above, the following shall not be regarded as moving traffic violations:

(1) Any motor vehicle "equipment" requirement of the motor vehicle and traffic laws, except brakes;

(2) Failure to display proper number plates provided such plates are in existence; or

(3) Failure to have in possession operator's or chauffeur's license, provided there is one in existence.

5. Two points shall be assigned for each accident involving the applicant, or any operator of the automobile resident in the same household, while operating any private passenger type automobile or motorcycle resulting in bodily injury or death, or resulting in damage to any property, including his own, of $100.00 or more, excluding any loss adjustment expenses.

6. One point shall be assigned for each property damage accident for which points have not been assigned under paragraph 5 above because the damage was less than $100.00, excluding any loss adjustment expenses.

7. No points shall be assigned under this subsection against the applicant:

i. For involvement in an accident which occurred while the motor vehicle owned or operated by the ap-

plicant or other person who usually drives the applicant's motor vehicle was lawfully parked;

ii. For involvement in an accident in which the motor vehicle was struck by a hit-and-run driver, if such accident was reported to the proper authority within 24 hours;

iii. For involvement in an accident as a result of which the applicant or other person who usually drives the applicant's motor vehicle obtained a judgment against, or a settlement from or on behalf of, the owner or operator of another vehicle involved in such accident, if the judgment or settlement was obtained prior to the date of application or, in the case of renewal, prior to the effective date of the renewal policy; and further provided no judgment was obtained against, nor any amount paid in settlement by or on behalf of, the applicant or other person who usually drives the applicant's motor vehicle, as a result of such accident;

iv. For involvement in an accident in connection with which neither the applicant or other person who usually drives the applicant's motor vehicle was convicted of a moving traffic violation, and the owner or operator of another vehicle involved was so convicted; nor

v. For physical damage losses other than collision.

8. Two points shall be assigned if the principal operator of the automobile has not been licensed for three years.

9. Additional charges for points shall be made on the basis of the following:

PERCENTAGE OF ADDITIONAL CHARGES

	Liability Including Medical Payments	Collision
1 Penalty point	20	10
2 Penalty points	40	20
3 Penalty points	65	35
4 Penalty points	90	45
5 Penalty points	120	60
6 Penalty points	150	75
7 Penalty points	185	90
8 Penalty points	220	110

Note: Irrespective of the classification of the risk, additional charges under this section shall be determined by applying the proper percentage to the total limits Class 4A premium for the appropriate rating territory as specified in Subchapter 3 (Supplement of Automobile Liability Insurance—Private Passenger Rates) of this Chapter.

Note: Points applicable to risks of two, three or four motor vehicles shall be applied first to the highest rated motor vehicle, and any points in excess of eight shall be applied to the next highest rated motor vehicle or motor vehicles in succession.

(g) Additional charges for risks, other than private passenger nonfleet shall apply as follows: (Note: With respect to motorcycles, motorized scooters and so forth, the following surcharges are applicable only to the collision portion of the premiums.)

1. An additional charge of 35 per cent shall be made if the applicant or anyone who usually drives the motor vehicle has, during the 36 months immediately preceding the date of application for assignment, and in the case of renewal, during the 36 months immediately preceding the effective date of the renewal policy:

i. Been involved as an operator or an owner in more than one motor vehicle accident resulting in injury to or death of any person or damage to property, provided that if the risk is subject to a debit of 35 per cent or more under an approved experience rating plan, such debit shall be deemed to include the additional charge of 35 per cent, and if the debit is less than 35 per cent, the additional charge of 35 per cent shall be deemed to include the experience debit;

ii. Been convicted of any of the following violations:

(1) Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

(2) Failing to stop and report when involved in an accident;

(3) Homicide or assault arising out of the operation of a motor vehicle;

(4) Driving a motor vehicle at an excessive rate of speed where injury to person or damage to property results therefrom;

(5) Driving a motor vehicle in a reckless manner where injury to person or damage to property results therefrom;

(6) Operating during period of revocation or suspension of registration or license;

(7) Operating a motor vehicle without State or owner's authority;

(8) Loaning operator's license to an unlicensed operator;

(9) Permitting an unlicensed person to drive;

(10) The making of false statements in the application for license or registration;

(11) Impersonating an applicant for license or registration, or procuring a license or registration through impersonation whether for himself or another; or

iii. Been convicted more than once of any moving traffic offense, or once each for two or more traffic offenses, other than those listed in subparagraph ii above, unless all such convictions arise out of a single incident or occurrence;

iv. Been involved as an operator or an owner in a motor vehicle accident resulting in injury to or death of any person or damage to property, and been convicted of any moving traffic offense, other than those listed in subparagraph ii above unless the accident and violation constituted, or arose out of, a single incident or occurrence;

v. Been involved as an owner or operator in a motor vehicle accident or been convicted of an offense, or has had a judgment entered against him, as a result of which he has been required to furnish proof of financial responsibility under a financial responsibility law, or been required upon any other ground, under a financial responsibility law, to furnish proof of financial responsibility; or

vi. Been convicted more than once of any nonmotor vehicle offense, or once each for two or more nonmotor

vehicle offenses, as a result of which the person so convicted was sentenced to imprisonment for five or more days, or fined $50.00 or more.

2. For risks not subject to paragraph 1 of this subsection an additional charge of 10 per cent for public passenger carrying and long haul trucking risks and 25 per cent for all others shall be made if the applicant or anyone who usually drives the motor vehicle has, during the 36 months immediately preceding the date of application for assignment and in the case of renewal during the 36 months immediately preceding the effective date of the renewal policy:

i. Been involved as an operator or owner in a motor vehicle accident resulting in injury to or death of any person or damage to property, provided that if the risk is subject to a debit under an approved experience rating plan, of ten per cent or more for a public passenger carrying or long-haul trucking risk, or 25 per cent for all others, such debit shall be deemed to include the additional charge of ten per cent or 25 per cent, and if the debit is less than ten per cent for public passenger carrying or long-haul trucking risks or 25 per cent for all others the additional charge of ten per cent or 25 per cent shall be deemed to include the experience debit;

ii. Been convicted of any moving traffic offense, other than those listed in subparagraph ii of paragraph 1 of this subsection; or

iii. Been convicted of any nonmotor vehicle offense and sentenced to imprisonment for five or more days, or fined $50.00 or more.

Note: For the purposes of this subsection, the following shall not be regarded as moving traffic violations:

(1) Any motor vehicle "equipment" requirement of the motor vehicle and traffic laws, except brakes;

(2) Failure to display proper number plates, provided such plates are in existence; or

(3) Failure to have in possession operator's or chauffeur's license, provided there is one in existence.

(h) If a risk involves vehicles rated under both subsections (b) and (g) surcharges shall be applied first to the vehicle which will produce the higher dollar amount, and successively to the next such vehicle on as many vehicles as there are persons subject to surcharge.

SUBCHAPTER 8. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES FOR PRIVATE PASSENGER CARS

N.J.A.C. 11:3-8.1

11:3-8.1 *General provisions*

FOREWORD

This rule applies to all private passenger automobiles as defined in N.J.S.A. 39:6A-2a which are required to have P.I.P. coverage, excluding those owned by business entities and fleets. (Effective January 1, 1978; but penal-

ties for noncompliance will not be imposed before March 1, 1978.)

(a) Every insurer shall make an offer to the insured named in a policy providing the coverage required by the New Jersey Automobile Reparation Reform Act to renew such policy upon its expiration date, unless a valid notice of nonrenewal has been sent by the insurer to the insured in accordance with this regulation. Such renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill and shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms including duration of contract of the policy as apply to the expiring policy, subject to changes approved by the commissioner that had become effective since the commencement of the current policy period. Payment by the insured in accordance with their terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the offer by the insured. The words "same limits" shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate. Insurers must permit insureds to return to their prior duration of policy term upon request.

As amended, R.1977 d.437, eff. January 1, 1978.

See: 9 N.J.R. 435(d), 9 N.J.R. 586(b).

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior

to the expiration of the current policy, setting forth the reason(s) for such nonrenewal. In lieu of stating such reason(s), the notice may name the person or persons giving cause for the nonrenewal, in which case the reason for nonrenewal shall be communicated in a separate letter to such person or persons.

1. No notice of nonrenewal shall be valid unless it includes the text of the designated portion of this rule under which action is being taken and the correct facts which bring the insured under the rule, including dates and any other facts necessary for identification of the incidents. In the event action is being taken under subsection (e)1 of this section, the text of the exceptions under subsection (e)2 must be included together with a statement, if true, that none of these exceptions are applicable. (Effective February 21, 1977, for notices sent on or after that date.)

(c) Nothing in this regulation shall be construed as prohibiting a renewal policy from being issued for higher limits of coverage and/or additional coverage(s), provided that such additional protection is specifically requested by the insured and the insurer is willing to provide it. Conversely, nothing shall prohibit the renewal policy from being issued for lower limits of coverage and/or fewer coverages provided that such reduction in protection is specifically requested by the insured person and provided further that coverage in no case shall fall below the level or levels otherwise required by law.

(d) Notice of non-renewal based upon one or more of the reasons stated below shall be deemed to have the consent of the Commissioner of Insurance required under Section 3 of the New Jersey Automobile Reparations Act. Any

refusal to renew an automobile insurance policy not based upon such reasons shall be submitted to the Commissioner of Insurance no later than 90 days prior to the expiration of the policy and shall only be issued to the insured with the consent of the Commissioner.

(e) No nonrenewal shall be valid unless it is based on one or more of the following:

1. Accident involvement: The named insured or any operator of an automobile resident in the same household who customarily operates the automobile or any other operator who customarily operates the automobile has been involved during the 36 months period ended 90 days prior to the expiration of the current policy in

i. More than one bodily injury accident if there is one car in the household or an average of more than one accident for all cars in the household, provided a loss payment has been made or a loss reserve has been established for such accidents other than a payment or reserve for the personal injury protection benefits, or

ii. More than one accident involving damage to any property including his own of $200.00 or more for which accident a payment was made or a loss reserve was established if there is one car in the household, or an average of more than one such accident for all cars in the household, provided that loss payments or reserves under the comprehensive physical damage coverage shall not be counted, or

iii. A combination of more than one such bodily injury or property damage accident, or

iv. If the named insured or anyone customarily operating the automobile has been involved in more than two such accidents regardless of the number of cars in the household.

2. Exceptions: Accidents under i. to iv. above shall not be counted if the accident occurred under the following circumstances:

i. Accident involved a claim or payment only under the Personal Injury Protection Coverage;

ii. Automobile lawfully parked (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as the operation of the last operator);

iii. Named insured or other operator residing in the same household, reimbursed by, or on behalf of, a person responsible for the accident or has judgment against such persons;

iv. Automobile of the named insured or other operator resident in the same household struck in rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident;

v. Operator of the other automobile involved in such accident was convicted of a moving traffic violation and the named insured or other operator resident in the same household was not convicted of a moving traffic violation in connection therewith;

vi. Automobile operated by named insured or other operator resident in the same household is damaged as a result of contact with a "hit and run" driver, if the acci-

dent was reported to legal authority within a reasonable time thereafter;

vii. Accidents involving damage by contact with animals or fowl.

3. Convictions concerning motor vehicle law: The named insured or any operator of an automobile resident in the same household who customarily operates the automobile or any other operator who customarily operates the automobile.

i. Has been convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for any one of the following motor vehicle law violations during the 36 months ended 90 days prior to the expiration date of the current policy:

(1) Driving while intoxicated or under the influence of drugs;

(2) Leaving the scene of an accident;

(3) Criminal negligence or assault arising out of the operation of a motor vehicle;

(4) Driving while license is suspended or revoked.

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more as defined in the New Jersey Motor Vehicle Law per car in the household or which result in an accumulation of nine or more points for any one such operator, provided that any operator who has been involved in such motor vehicle law violations continues to be an operator of the automobile at the time of renewal.

4. Convictions other than motor vehicle laws: The named insured or anyone customarily operating the automobile is convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for obtaining or attempting to obtain from any other person, insurance company or the unsatisfied claim and judgment fund any money or any other thing of value by falsely or fraudulently representing that such person is entitled to such consideration under the automobile insurance policy, or falsely and fraudulently making statement or presenting documentation in order to obtain such consideration, or by cooperating, conspiring or otherwise acting in concert with any person seeking to obtain or attempting to obtain falsely or fraudulently such consideration.

5. Use of the automobile in professional racing.

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for.

7. Refusal to submit to a medical examination at company expense where there is reason for the company to doubt an operator's ability to operate the automobile safely.

8. Addition of an operator of the automobile during the policy term or for the new policy term with respect to whom any of the above causes for nonrenewal would apply.

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the

owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. Termination of membership in an automobile or travel club shall not fall under this provision.

10. Failure by an insured under the policy to comply with the cooperation or subrogation clause of the policy, subject to reasonable rules established by the commissioner.

11. Request by producer of record not to renew policy, provided such request is accompanied by a true statement by the producer that he has replaced like coverage at approved rates in the voluntary market with an admitted carrier, specifying the name of the carrier; provided also that the transferor carrier has advised the insured in writing of his right to renewal in the same company before obtaining the insured's consent to transfer, and of the insured's right to renew if he or she is cancelled by the new carrier for reasons other than nonpayment or suspension or revocation of registration or driver's license. The producer's request for nonrenewal shall be made no later than 90 days prior to the expiration of the policy and a copy thereof shall be sent by the producer to the named insured. A nonrenewal based on such request shall be invalid and the company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

(f) Failure by a terminated agent to request renewal during the period of nine months from the effective date of

termination as provided in N.J.S.A. 17:22-6.14(a) shall be construed as request not to renew in the context of this regulation.

(g) This rule shall apply to all private passenger automobile coverages when included in a policy providing for statutorily mandated personal injury protection and liability coverage.

New Jersey Court Rules

Rule 2:2-1(a)

2:2-1. *Appeals to the Supreme Court from Final Judgments*

(a) As of Right. Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State; (2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; (3) directly from the trial courts in cases where the death penalty has been imposed and in post-conviction proceedings in such cases; (4) in such cases as are provided by law.

Rule 4:34-4

4:34-4. *Public Officers; Death or Separation from Office*

When any public officer sues or is sued in his official capacity whether or not his name is mentioned, and then dies, resigns or for any reason ceases to hold office, his succes-

sor in office shall be deemed to have been substituted in his place unless the court on motion otherwise orders; but the court may on motion specially order the substitution of such successor in office.